

By: Wentworth

S.B. No. 1243

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of heir finders by the Texas Private Security Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1702.002, Occupations Code, is amended by adding Subdivisions (6-b) and (8-a) to read as follows:

(6-b) "Estate," "heir," and "probate court" have the meanings assigned by Section 3, Texas Probate Code.

(8-a) "Heir finder" means a person who for payment of a fee, assignment of a portion of any interest in a decedent's estate, or other consideration provides information, assistance, forensic genealogy research, or other efforts related to another person's right to or interest in a decedent's estate.

SECTION 2. Section 1702.004(a), Occupations Code, is amended to read as follows:

(a) The board, in addition to performing duties required by other law or exercising powers granted by other law:

(1) licenses investigations companies and security services contractors;

(2) issues commissions to certain security officers;

(3) issues authorizations to certain security officers engaged in the personal protection of individuals;

(4) registers:

(A) certain individuals connected with a license

holder; and

(B) certain individuals employed in a field connected to private investigation or private security; ~~and~~

(5) registers heir finders under Subchapter K-1; and

(6) regulates license holders, security officers, and registrants under this chapter.

SECTION 3. Section 1702.042, Occupations Code, is amended to read as follows:

Sec. 1702.042. PERSONNEL; CONFLICT OF INTEREST. An employee of the commission may not:

(1) have a financial or business interest, contingent or otherwise, in a security services contractor, ~~or~~ investigations company, or company providing services as an heir finder; or

(2) be licensed under this chapter.

SECTION 4. Chapter 1702, Occupations Code, is amended by adding Subchapter K-1 to read as follows:

SUBCHAPTER K-1. REGULATION OF HEIR FINDERS

Sec. 1702.271. DEFINITION. In this subchapter, "family member," with respect to a decedent, means a person who would be considered an heir of the decedent at the time of the decedent's death.

Sec. 1702.272. APPLICATION OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a person acting in the capacity of a personal representative, attorney ad litem, guardian ad litem, or other person appointed by a probate court in which a proceeding in

1 connection with a decedent's estate is pending; or

2 (2) an attorney providing legal services to a  
3 decedent's family member if the attorney has not agreed to pay to  
4 any other person a portion of the fees received from the family  
5 member or the family member's interest in the decedent's estate.

6 (b) In this section, "attorney ad litem," "guardian ad  
7 litem," and "personal representative" have the meanings assigned by  
8 the Texas Probate Code.

9 Sec. 1702.273. REGISTRATION REQUIRED. (a) A person may not  
10 offer to provide or provide services as an heir finder unless the  
11 person registers with the board.

12 (b) Notwithstanding any other provision of this chapter, an  
13 heir finder is not required to be licensed or affiliated with a  
14 license holder.

15 (c) A registration under this subchapter does not expire.

16 Sec. 1702.274. REGISTRATION APPLICATION. An application  
17 for registration under this subchapter must be in the form  
18 prescribed by the board and include:

19 (1) the full name and business address of the  
20 applicant;

21 (2) the name under which the applicant intends to do  
22 business;

23 (3) a statement as to the general nature of the  
24 business in which the applicant intends to engage;

25 (4) if the applicant is an entity other than an  
26 individual, the full name and residence address of each partner,  
27 officer, and director of the applicant, and of the applicant's

1 manager;

2 (5) if the applicant is an individual, two  
3 classifiable sets of fingerprints of the applicant or, if the  
4 applicant is an entity other than an individual, of each officer and  
5 of each partner or shareholder who owns at least a 25 percent  
6 interest in the applicant;

7 (6) a verified statement of the applicant's experience  
8 and qualifications;

9 (7) a report from the department stating the  
10 applicant's record of any convictions for a Class B misdemeanor or  
11 equivalent offense or a greater offense;

12 (8) the social security number of the individual  
13 making the application; and

14 (9) other information, evidence, statements, or  
15 documents required by the board.

16 Sec. 1702.275. FEES. The board may adopt fees as necessary  
17 for the registration of heir finders under this subchapter.

18 Sec. 1702.276. PROHIBITED CONTRACTS. (a) This section  
19 applies only to a contract or other agreement that:

20 (1) is entered into with a family member of a decedent  
21 or with another person on behalf of the family member; and

22 (2) provides for payment of a fee, assignment of a  
23 portion of any interest in the decedent's estate, or other  
24 consideration by the family member out of the family member's right  
25 to or interest in the decedent's estate or to a person registered  
26 under this subchapter for providing information, assistance,  
27 forensic genealogy research, or other efforts related to the family

1 member's right to or interest in the decedent's estate or property.

2 (b) A person registered under this subchapter may not enter  
3 into a contract or other agreement described by Subsection (a):

4 (1) during the six-month period after the earlier of:

5 (A) the date of the filing of an application for  
6 determination of heirship of the decedent; or

7 (B) the date of the filing of a pleading to  
8 determine which family members of the decedent have a right to  
9 property in the decedent's estate, if the right to the property is  
10 based principally on the probate court's determination of the  
11 decedent's family history; or

12 (2) if the amount or value of the fee, assignment, or  
13 other consideration is greater than 10 percent of the value of the  
14 family member's right to or interest in the decedent's estate.

15 (c) A contract entered into in violation of this section is  
16 void.

17 Sec. 1702.277. COMPLAINTS AND DISCIPLINARY ACTIONS. A  
18 person registered under this subchapter is subject to the same  
19 complaint procedures and disciplinary actions as other persons  
20 regulated under this chapter.

21 Sec. 1702.278. PENALTIES. A person registered under this  
22 subchapter is subject to the same penalties and enforcement  
23 procedures as other persons regulated under this chapter.

24 Sec. 1702.279. FIDUCIARY DUTY; LIABILITY. (a) A person  
25 registered under this subchapter who provides services as an heir  
26 finder to another person owes a fiduciary duty to the other person  
27 to act in that person's best interest.

1        (b) A person who breaches a fiduciary duty under Subsection  
2 (a) is liable for any damages resulting from the breach, including:

3                (1) any loss or depreciation in value of the estate as  
4 a result of the breach;

5                (2) any profit made by the person as a result of the  
6 breach;

7                (3) any profit that would have accrued to the estate if  
8 there had been no breach;

9                (4) exemplary damages; and

10               (5) costs and attorney's fees incurred as a result of  
11 the breach.

12        SECTION 5. As soon as possible after the effective date of  
13 this Act, the Texas Private Security Board shall adopt the form,  
14 procedures, and fees necessary to implement Subchapter K-1, Chapter  
15 1702, Occupations Code, as added by this Act.

16        SECTION 6. Notwithstanding Subchapter K-1, Chapter 1702,  
17 Occupations Code, as added by this Act, a person offering to provide  
18 or providing services as an heir finder is not required to register  
19 under that subchapter before January 1, 2010.

20        SECTION 7. Section 1702.276, Occupations Code, as added by  
21 this Act, applies only to a contract entered into on or after  
22 January 1, 2010.

23        SECTION 8. (a) Except as provided by Subsection (b) of this  
24 section, this Act takes effect September 1, 2009.

25        (b) Sections 1702.273, 1702.276, 1702.277, 1702.278, and  
26 1702.279, Occupations Code, as added by this Act, take effect  
27 January 1, 2010.