

1-1 By: Wentworth S.B. No. 1243
1-2 (In the Senate - Filed March 2, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 20, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 20, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1243 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of heir finders by the Texas Private
1-11 Security Board; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1702.002, Occupations Code, is amended
1-14 by adding Subdivisions (6-b) and (8-a) to read as follows:

1-15 (6-b) "Estate," "heir," and "probate court" have the
1-16 meanings assigned by Section 3, Texas Probate Code.

1-17 (8-a) "Heir finder" means a person who for payment of a
1-18 fee, assignment of a portion of any interest in a decedent's estate,
1-19 or other consideration provides information, assistance, forensic
1-20 genealogy research, or other efforts related to another person's
1-21 right to or interest in a decedent's estate.

1-22 SECTION 2. Subsection (a), Section 1702.004, Occupations
1-23 Code, is amended to read as follows:

1-24 (a) The board, in addition to performing duties required by
1-25 other law or exercising powers granted by other law:

1-26 (1) licenses investigations companies and security
1-27 services contractors;

1-28 (2) issues commissions to certain security officers;

1-29 (3) issues authorizations to certain security
1-30 officers engaged in the personal protection of individuals;

1-31 (4) registers:

1-32 (A) certain individuals connected with a license
1-33 holder; and

1-34 (B) certain individuals employed in a field
1-35 connected to private investigation or private security; ~~and~~

1-36 (5) licenses heir finders under Subchapter K-1; and

1-37 (6) regulates license holders, security officers, and
1-38 registrants under this chapter.

1-39 SECTION 3. Section 1702.042, Occupations Code, is amended
1-40 to read as follows:

1-41 Sec. 1702.042. PERSONNEL; CONFLICT OF INTEREST. An
1-42 employee of the commission may not:

1-43 (1) have a financial or business interest, contingent
1-44 or otherwise, in a security services contractor, ~~or~~
1-45 investigations company, or company providing services as an heir
1-46 finder; or

1-47 (2) be licensed under this chapter.

1-48 SECTION 4. Chapter 1702, Occupations Code, is amended by
1-49 adding Subchapter K-1 to read as follows:

1-50 SUBCHAPTER K-1. REGULATION OF HEIR FINDERS

1-51 Sec. 1702.271. DEFINITION. In this subchapter, "family
1-52 member," with respect to a decedent, means a person who would be
1-53 considered an heir of the decedent at the time of the decedent's
1-54 death.

1-55 Sec. 1702.272. APPLICATION OF SUBCHAPTER. (a) This
1-56 subchapter does not apply to:

1-57 (1) a person acting in the capacity of a personal
1-58 representative, attorney ad litem, guardian ad litem, or other
1-59 person appointed by a probate court in which a proceeding in
1-60 connection with a decedent's estate is pending;

1-61 (2) a forensic genealogist employed or retained by a
1-62 government agency, court, or court-appointed attorney ad litem; or

1-63 (3) an attorney providing legal services to a

2-1 decedent's family member if the attorney has not agreed to pay to
 2-2 any other person a portion of the fees received from the family
 2-3 member or the family member's interest in the decedent's estate.

2-4 (b) In this section, "attorney ad litem," "guardian ad
 2-5 litem," and "personal representative" have the meanings assigned by
 2-6 the Texas Probate Code.

2-7 Sec. 1702.273. LICENSE REQUIRED. (a) A person may not
 2-8 offer to provide or provide services as an heir finder unless the
 2-9 person holds a license as an heir finder.

2-10 (b) A license under this subchapter:

2-11 (1) is valid for three years from the date of issuance;
 2-12 and

2-13 (2) may be renewed.

2-14 Sec. 1702.274. LICENSE APPLICATION. An application for a
 2-15 license under this subchapter must be in the form prescribed by the
 2-16 board and include:

2-17 (1) the full name and business address of the
 2-18 applicant;

2-19 (2) the name under which the applicant intends to do
 2-20 business;

2-21 (3) a statement as to the general nature of the
 2-22 business in which the applicant intends to engage;

2-23 (4) if the applicant is an entity other than an
 2-24 individual, the full name and residence address of each partner,
 2-25 officer, and director of the applicant, and of the applicant's
 2-26 manager;

2-27 (5) if the applicant is an individual, two
 2-28 classifiable sets of fingerprints of the applicant or, if the
 2-29 applicant is an entity other than an individual, of each officer and
 2-30 of each partner or shareholder who owns at least a 25 percent
 2-31 interest in the applicant;

2-32 (6) a verified statement of the applicant's experience
 2-33 and qualifications;

2-34 (7) a report from the department stating the
 2-35 applicant's record of any convictions for a Class B misdemeanor or
 2-36 equivalent offense or a greater offense;

2-37 (8) the social security number of the individual
 2-38 making the application; and

2-39 (9) other information, evidence, statements, or
 2-40 documents required by the board.

2-41 Sec. 1702.275. FEES. The board may adopt fees as necessary
 2-42 for the issuance of a license under this subchapter.

2-43 Sec. 1702.276. INSURANCE; BOND. A license holder shall
 2-44 maintain on file with the board at all times a surety bond and
 2-45 certificate of insurance as required by board rule. The insurance
 2-46 policy must contain minimum limits of \$2 million for all
 2-47 occurrences.

2-48 Sec. 1702.277. CERTAIN CONTRACTS. (a) This section
 2-49 applies only to a contract or other agreement that:

2-50 (1) is entered into with a family member of a decedent
 2-51 or with another person on behalf of the family member; and

2-52 (2) provides for payment of a fee, assignment of a
 2-53 portion of any interest in the decedent's estate, or other
 2-54 consideration by the family member out of the family member's right
 2-55 to or interest in the decedent's estate to a person licensed under
 2-56 this subchapter for providing information, assistance, forensic
 2-57 genealogy research, or other efforts related to the family member's
 2-58 right to or interest in the decedent's estate or property.

2-59 (b) Except as provided by Subsection (c), if the amount or
 2-60 value of the fee, assignment, or other consideration for a contract
 2-61 or other agreement described by Subsection (a) is equal to or less
 2-62 than 30 percent of the value of the family member's right to or
 2-63 interest in the decedent's estate, a person licensed under this
 2-64 subchapter may enter into the contract or agreement only at the
 2-65 discretion of the probate court in which the proceeding in
 2-66 connection with the decedent's estate is pending.

2-67 (c) A person licensed under this subchapter may not enter
 2-68 into a contract or other agreement described by Subsection (a):

2-69 (1) subject to Subsection (d), during the 75-day

period after the earlier of:

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

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

(2) if the amount or value of the fee, assignment, or other consideration is greater than 30 percent of the value of the family member's right to or interest in the decedent's estate.

(d) Subsection (c)(1) applies only if a forensic genealogist or attorney ad litem has been appointed by a probate court in which a proceeding in connection with the decedent's estate is pending.

(e) A contract entered into in violation of this section is void.

Sec. 1702.278. COMPLAINTS AND DISCIPLINARY ACTIONS. A person licensed under this subchapter is subject to the same complaint procedures and disciplinary actions as other persons regulated under this chapter.

Sec. 1702.279. PENALTIES. A person licensed under this subchapter is subject to the same penalties and enforcement procedures as other persons regulated under this chapter.

Sec. 1702.280. FIDUCIARY DUTY; LIABILITY. (a) A person licensed under this subchapter who provides services as an heir finder to another person owes a fiduciary duty to the other person to act in that person's best interest.

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

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

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

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

(4) exemplary damages; and

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

SECTION 5. Chapter I, Texas Probate Code, is amended by adding Section 36G to read as follows:

Sec. 36G. HEIR FINDERS. (a) In this section, "heir finder" has the meaning assigned by Section 1702.002, Occupations Code.

(b) The court may not appoint an attorney as an attorney ad litem in a probate proceeding if the attorney:

(1) is acting as or represents an heir finder in the same proceeding; or

(2) has acted as or has represented an heir finder in another probate proceeding concerning the same decedent.

(c) Chapter 1702, Occupations Code, governs the licensing and regulation of heir finders.

SECTION 6. Section 36G, Texas Probate Code, as added by this Act, applies only to a probate proceeding commenced on or after the effective date of this Act without regard to whether:

(1) the decedent's death occurred before, on, or after that date; or

(2) the probate proceeding is the original proceeding.

SECTION 7. As soon as possible after the effective date of this Act, the Texas Private Security Board shall adopt the form, procedures, and fees necessary to implement Subchapter K-1, Chapter 1702, Occupations Code, as added by this Act.

SECTION 8. Notwithstanding Subchapter K-1, Chapter 1702, Occupations Code, as added by this Act, a person offering to provide or providing services as an heir finder is not required to be licensed under that subchapter before January 1, 2010.

SECTION 9. Section 1702.277, Occupations Code, as added by this Act, applies only to a contract entered into on or after January 1, 2010.

4-1 SECTION 10. (a) Except as provided by Subsection (b) of
4-2 this section, this Act takes effect September 1, 2009.

4-3 (b) Sections 1702.273, 1702.277, 1702.278, 1702.279, and
4-4 1702.280, Occupations Code, as added by this Act, take effect
4-5 January 1, 2010.

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