

## **BILL ANALYSIS**

Senate Research Center  
81R23289 MTB-F

C.S.S.B. 1243  
By: Wentworth  
Jurisprudence  
4/17/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, there are no statutes that specifically govern heir finders or protect an heir's interest in a decedent's estate. This legislation is in response to the recommendations made by the Senate Committee on Jurisprudence in its interim report to the 81st Legislature.

C.S.S.B. 1243 amends current law relating to the regulation of heir finders by the Texas Private Security Board.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 4 (Section 1702.276, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1702.002, Occupations Code, by adding Subdivisions (6-b) and (8-a), to define "estate," "heir," "probate court," and "heir finder."

SECTION 2. Amends Section 1702.004(a), Occupations Code, to provide that the Texas Private Security Board (board), in addition to performing duties required by other law or exercising powers granted by other law, registers heir finders under Subchapter K-1. Makes nonsubstantive changes.

SECTION 3. Amends Section 1702.042, Occupations Code, to prohibit an employee of the Texas Commission on Private Security from having a financial or business interest, contingent or otherwise, in a security services contractor, investigations company, or company providing services as an heir finder.

SECTION 4. Amends Chapter 1702, Occupations Code, by adding Subchapter K-1, as follows:

#### **SUBCHAPTER K-1. REGULATION OF HEIR FINDERS**

Sec. 1702.271. DEFINITION. Defines "family member."

Sec. 1702.272. APPLICATION OF SUBCHAPTER. (a) Provides that this subchapter does not apply to 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 connection with a decedent's estate is pending; a forensic genealogist employed or retained by a government agency, court, or court-appointed attorney ad litem; or an attorney providing legal services to a decedent's family member if the attorney has not agreed to pay to any other person a portion of the fees received from the family member of the family member's interest in the decedent's estate.

(b) Defines "attorney ad litem," "guardian ad litem," and "personal representative."

Sec. 1702.273. LICENSE REQUIRED. (a) Prohibits a person from offering to provide or providing services as an heir finder unless the person holds a license as an heir finder.

(b) Provides that a license under this subchapter is valid for three years from the date of issuance and may be renewed.

Sec. 1702.274. LICENSE APPLICATION. Requires that an application for a license under this subchapter be in the form prescribed by the Texas Private Security Board (board) and include certain information.

Sec. 1702.275. FEES. Authorizes the board to adopt fees as necessary for the issuance of a license under this subchapter.

Sec. 1702.276. INSURANCE; BONDS. Requires a license holder to maintain on file with the board at all times a surety bond and certificate of insurance as required by board rule. Requires that the insurance policy contain minimum limits of \$2 million for all occurrences.

Sec. 1702.277. CERTAIN CONTRACTS. (a) Provides that this section applies only to a contract or other agreement that is entered into with a family member of a decedent or with another person on behalf of the family member; and provides for payment of a fee, assignment of a portion of any interest in the decedent's estate, or other consideration by the family member out of the family member's right to or interest in the decedent's estate or to a person licensed under this subchapter for providing information, assistance, forensic genealogy research, or other efforts related to the family member's right to or interest in the decedent's estate or property.

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

(c) Prohibits a person licensed under this subchapter from entering into a contract or other agreement described by Subsection (a), subject to Subsection (d), during the 75-day period after the earlier of a certain date of filing or if the amount or value of the fee, assignment, or 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) Provides that 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) Provides that a contract entered into in violation of this section is void.

Sec. 1702.278. COMPLAINTS AND DISCIPLINARY ACTIONS. Provides that 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. Provides that 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) Provides that a person registered 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) Provides that a person who breaches a fiduciary duty under Subsection (a) is liable for any damages resulting from the breach, including any loss or depreciation in value of the estate as a result of the breach, any profit made by the person as a result of the breach, any profit that would have accrued to the estate if

there had been no breach, exemplary damages, and costs and attorney's fees incurred as a result of the breach.

SECTION 5. Amends Chapter I, Texas Probate Code, by adding Section 36G, as follows:

Sec. 36G. HEIR FINDERS. (a) Defines "heir finder."

(b) Prohibits the court from appointing an attorney as an attorney ad litem in a probate proceeding if the attorney is acting as or represents an heir finder in the same proceeding or has acted as or has represented an heir finder in another probate proceeding concerning the same decedent.

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

SECTION 6. Provides that 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 the decedent's death occurred before, on, or after that date; or the probate proceeding is the original proceeding.

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

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

SECTION 9. Makes application of Section 1702.277, Occupations Code, as added by this Act prospective.

SECTION 10. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 1702.273 and 1702.277-1702.280, Occupations Code, as added by this Act: January 1, 2010.