

## **BILL ANALYSIS**

Senate Research Center  
81R9290 MTB-D

S.B. 1243  
By: Wentworth  
Jurisprudence  
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As Filed

### **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 80th Legislature interim report.

As proposed, S.B. 1243 amends Chapter 1702, Occupations Code, to authorize and set forth provisions relating to the registration and regulation of heir finders by the Texas Private Security Board.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **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 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. REGISTRATION REQUIRED. (a) Prohibits a person from offering to provide or providing services as an heir finder unless the person registers with the board.

(b) Provides that a heir finder, notwithstanding any other provision of this chapter, is not required to be licensed or affiliated with a license holder.

(c) Provides that a registration under this chapter does not expire.

Sec. 1702.274. REGISTRATION APPLICATION. Requires that an application for registration under this chapter be in the form prescribed by the board and include certain information.

Sec. 1702.275. FEES. Authorizes the board to adopt fees as necessary for the registration of heir finders under this subchapter.

Sec. 1702.276. PROHIBITED 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 registered 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) Prohibits a person registered under this subchapter from entering into a contract or other agreement described by Subsection (a) during the six-month period after 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 10 percent of the value of the family member's right to or interest in the decedent's estate.

(c) Provides that a contract entered into in violation of this section is void.

Sec. 1702.277. COMPLAINTS AND DISCIPLINARY ACTIONS. Provides that a person registered under this subchapter is subject to the same complaint procedures and disciplinary actions as other persons regulated under this chapter.

Sec. 1702.278. PENALTIES. Provides that a person registered under this subchapter is subject to the same penalties and enforcement procedures as other persons regulated under this chapter.

Sec. 1702.279. 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. 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 6. 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 7. Makes application of Section 1702.276, Occupations Code, as added by this Act prospective.

SECTION 8. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 1702.273 and 1702.276-1702.279, Occupations Code: January 1, 2010.