

By Representative Brutus

1 A bill to be entitled
2 An act relating to regulating heir finders;
3 providing legislative findings and intent;
4 providing definitions; requiring licensure of
5 heir finders and heir finder businesses;
6 providing for administration by the Department
7 of Business and Professional Regulation;
8 providing powers and duties of the department;
9 providing qualifications; requiring
10 examinations; requiring a bond; providing
11 limitations; providing for license renewal and
12 reactivation; providing for fees; providing for
13 local licensing requirements; providing for
14 licensing of nonresidents; specifying
15 prohibited acts; providing penalties; providing
16 a felony penalty for certain activities;
17 providing for an Heir Finder Recovery Fund as a
18 separate account in the Professional Regulation
19 Trust Fund; providing for administration by the
20 department; providing for duties and
21 responsibilities of the Treasurer; providing
22 for investing moneys of the fund; providing for
23 uses of the fund; providing conditions for
24 recovery from the fund under certain
25 circumstances; providing for eligibility;
26 providing for a surcharge to license fees;
27 providing assessing licensees under certain
28 circumstances for certain purposes; providing
29 for payments from the fund under certain
30 circumstances; providing for payment of claims;
31 providing for license suspension under certain

1 circumstances; providing for repayment by
2 licensees; providing for expenditure of excess
3 funds for certain purposes; providing an
4 effective date.

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6 Be It Enacted by the Legislature of the State of Florida:

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8 Section 1. (1) PURPOSE.--The Legislature finds that
9 unqualified heir finders and unreliable heir finder businesses
10 present a significant threat to the public. It is the intent
11 of the Legislature to protect the public by regulating heir
12 finders and heir finder businesses and by requiring a license
13 to operate.

14 (2) DEFINITIONS.--As used in this act, the term:

15 (a) "Heir finder business" means a sole
16 proprietorship, partnership, or corporation which in the
17 regular course of business arranges, manages, advertises,
18 promotes, or carries out contracts or agreements to locate
19 heirs to property.

20 (b) "Heir finder" means any person licensed pursuant
21 to this act who holds a valid Florida heir finder license.

22 (c) "Department" means the Department of Business and
23 Professional Regulation.

24 (3) LICENSES REQUIRED; QUALIFICATIONS; EXAMINATION;
25 BOND.--

26 (a) The department shall license any applicant who the
27 department determines is qualified to operate an heir finding
28 business.

29 (b) No person shall operate any heir finding business
30 in this state unless he or she is licensed by the department.

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1 (c) No person shall be licensed as an heir finder if
2 he or she:

3 1. Is under 18 years of age; or

4 2. Has committed any act or offense in this state or
5 any other jurisdiction which would constitute a basis for
6 disciplinary action under subsection (8).

7 (d) Any person seeking a license as an heir finder
8 must pass a written examination approved by the department
9 which tests his or her general knowledge of the laws of this
10 state that are relevant to estates, the laws of agency, and
11 the provisions of this act.

12 (e) No person shall be licensed as an heir finder
13 unless he or she:

14 1. Has passed the required examination; and

15 2. Is approved by the department.

16 (f)1. Any heir finder business that is subject to the
17 provisions of this act must be conducted by an heir finder who
18 has an active license.

19 2. No business shall operate as an heir finder
20 business or offer to operate as an heir finder business in
21 this state unless it is licensed as an heir finder business by
22 the department. Each application for licensure shall include
23 the names of the owner and the business, the business mailing
24 address and location, and any other information which the
25 department may require. The owner of an heir finder business
26 shall report to the department within 30 days after any change
27 in this required information.

28 (g) A license issued by the department to an heir
29 finder is not transferable.

30 (4) RENEWAL OF LICENSE.--
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1 (a) The department shall renew a license upon receipt
2 of the renewal application and fee.

3 (b) The department shall adopt rules establishing a
4 procedure for the biennial renewal of licenses.

5 (5) REACTIVATION OF LICENSE; FEE.--The department
6 shall prescribe by rule a fee not to exceed \$250 for the
7 reactivation of an inactive license. The fee shall be in
8 addition to the current biennial renewal fee.

9 (6) FEES; LOCAL LICENSING REQUIREMENTS.--

10 (a) The department by rule may establish application,
11 examination, licensure, renewal, and other reasonable and
12 necessary fees, based upon the department's estimate of the
13 costs in administering this act.

14 (b) An heir finder shall obtain a local occupational
15 license, if required, in the jurisdiction in which his or her
16 permanent business or branch office is located. However, no
17 local government or local agency may charge any other fee for
18 the practice of heir finding or require any heir finder's
19 license in addition to the license required by this act.

20 (7) LICENSING OF NONRESIDENTS; ENDORSEMENT;
21 RECIPROCITY.--The department shall issue a license by
22 endorsement to engage in heir finding to an applicant who,
23 upon applying to the department and remitting the required
24 fee, set by the department, demonstrates to the department
25 that he or she satisfies the requirements of paragraph (4)(c)
26 and holds a valid license to engage in heir finding activities
27 in another state, provided that the requirements for licensure
28 in that state are substantially equivalent to or more
29 stringent than those existing in this state. The endorsement
30 and reciprocity provisions of this section shall apply to heir
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1 finders only and not to professions or occupations regulated
2 by other statutes.
3 (8) PROHIBITED ACTS; PENALTIES.--
4 (a) The following acts shall be grounds for the
5 disciplinary activities provided in paragraphs (b) and (c):
6 1. Misrepresentation of property alleged to be owned
7 by an heir or making false promises concerning such property
8 by an heir finder or heir finder business or by anyone acting
9 as an agent of or with the consent of the heir finder or heir
10 finder business.
11 2. Failure to account for or to pay or return, within
12 a reasonable time not to exceed 30 days, money or property
13 belonging to another which has come into the control of an
14 heir finder or heir finder business through heir finding
15 activities.
16 3. False, deceptive, misleading, or untruthful
17 advertising.
18 4. Any conduct in connection with an heir finder
19 contract or agreement which demonstrates bad faith or
20 dishonesty.
21 5. Making any material false statement on a license
22 application.
23 6. Commingling money or property of another person
24 with his or her own. Every heir finder and heir finder
25 business shall maintain a separate trust or escrow account in
26 an insured bank or savings and loan association located in
27 this state in which shall be deposited all proceeds received
28 for another person through heir finding activities.
29 7. Refusal or neglect of any heir finder or other
30 receiver of public moneys to pay the moneys so received into
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1 the State Treasury at the times and under the regulations
2 prescribed by law.

3 8. Violating a statute or administrative rule
4 regulating activities under this act or a lawful disciplinary
5 order of the department.

6 9. Having a license to practice a comparable
7 profession revoked, suspended, or otherwise acted against by
8 another state, territory, or country.

9 10. Being convicted or found guilty, regardless of
10 adjudication, of a crime in any jurisdiction which directly
11 relates to engaging in heir finding or operating an heir
12 finding business.

13 (b) When the department finds any person guilty of any
14 of the prohibited acts set forth in paragraph (a), it may
15 enter an order imposing one or more of the following
16 penalties:

17 1. Refusal to certify to the department an application
18 for licensure.

19 2. Revocation or suspension of a license.

20 3. Imposition of an administrative fine not to exceed
21 \$1,000 for each count or separate offense.

22 4. Issuance of a reprimand.

23 5. Placement of the heir finder on probation for a
24 period of time and subject to conditions as the department may
25 specify, including requiring the heir finder to successfully
26 complete the licensure examination.

27 6. Requirement that the person in violation make
28 restitution to each person affected by that violation. Proof
29 of such restitution shall be a signed and notarized release
30 executed by the person or the person's estate.

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1 (c)1. Failure to pay a fine within a reasonable time,
2 as prescribed by department rule, may be grounds for
3 disciplinary action.

4 2. The department may file for an injunction or bring
5 any other appropriate civil action against anyone who violates
6 this act.

7 (9) PENALTY.--Any heir finder, or heir finder business
8 or any owner or manager thereof, or, in the case of corporate
9 ownership, any substantial stockholder of the corporation
10 owning the heir finding business, who operates without an
11 active license or violates any provision of the prohibited
12 acts listed under subsection (8) commits a felony of the third
13 degree, punishable as provided in s. 775.082 or s. 775.083.

14 (10) HEIR FINDER RECOVERY FUND.--There is created the
15 Heir Finder Recovery Fund as a separate account in the
16 Professional Regulation Trust Fund. The fund shall be
17 administered by the department.

18 (a) The Treasurer shall invest the money not currently
19 needed to meet the obligations of the fund in the same manner
20 as other public funds may be invested. Interest that accrues
21 from these investments shall be deposited to the credit of the
22 Heir Finder Recovery Fund and shall be available for the same
23 purposes as other moneys deposited in the Heir Finder Recovery
24 Fund.

25 (b) All payments and disbursements from the Heir
26 Finder Recovery Fund shall be made by the Treasurer upon a
27 voucher signed by the Secretary of Business and Professional
28 Regulation or the secretary's designee. Amounts transferred to
29 the Heir Finder Recovery Fund shall not be subject to any
30 limitation imposed by an appropriation act of the Legislature.

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1 (c) If at any time the moneys in the Heir Finder
2 Recovery Fund are insufficient to satisfy any valid claim or
3 portion thereof, the department shall satisfy such unpaid
4 claim or portion thereof as soon as a sufficient amount has
5 been deposited in or transferred to the fund. When there is
6 more than one unsatisfied claim outstanding, such claims shall
7 be paid in the order in which the claims were made.

8 (d) Upon the payment of any amount from the Heir
9 Finder Recovery Fund in settlement of a claim in satisfaction
10 of a judgment against an heir finder or heir finder business
11 as described in subsection (13), the license of such heir
12 finder or heir finder business shall be automatically
13 suspended until the licensee has complied with subsection
14 (16). A discharge of bankruptcy shall not relieve a person
15 from the penalties and disabilities provided in this
16 subsection.

17 (e) Moneys in the fund at the end of a fiscal year
18 shall be retained in the fund and shall accrue for the benefit
19 of heir finders and heir finder businesses. When the fund
20 exceeds the amount as set forth in paragraph (11)(b), all
21 surcharges shall be suspended until such time as the fund is
22 reduced below the amount as set forth in paragraph (11)(c).

23 (11) SURCHARGE TO LICENSE FEE; ASSESSMENTS.--

24 (a) At the time of licensure under subsection (3),
25 subsection (4), or subsection (5), each licensee shall pay, in
26 addition to an application and license fee, a surcharge in an
27 amount to be determined by the department, not to exceed \$300,
28 which shall be deposited in the Heir Finder Recovery Fund.

29 (b) If the total amount in the Heir Finder Recovery
30 Fund, including principal and interest, exceeds \$500,000 at
31 the end of the state fiscal year after the payment of all

1 claims and expenses, the amount in excess of \$500,000 shall
2 remain in the fund for benefit of the licensees in tolling the
3 surcharge until such time as the surcharge shall need
4 replenishing.

5 (c) If the total amount in the Heir Finder Recovery
6 Fund, including principal and interest, is less than \$200,000
7 at the end of the fiscal year after the payment of all claims
8 and expenses, the department shall assess, in addition to any
9 other fees under subsection (5), a surcharge against a
10 licensee at the time of initial licensure or at the time of
11 license renewal, according to the following formula in order
12 to maintain the fund at \$500,000:

13 1. Determine the amount remaining in the fund at the
14 end of the state fiscal year after all expenses and claims
15 have been paid.

16 2. Subtract the amount determined under subparagraph
17 1. from \$500,000.

18 3. Determine the number of initial licenses and
19 license renewals in the fiscal year that precedes the current
20 fiscal year.

21 4. Divide the amount determined under subparagraph 2.
22 by the number determined under subparagraph 3.

23 (d) The department shall assess the surcharge
24 described in paragraph (c) against each licensee who receives
25 an initial license or receives a renewal license during the
26 fiscal year that follows the year in which the amount
27 remaining in the fund was less than \$200,000.

28 (12) INTEREST CREDITED; PAYMENT OF EXPENSES.--Any
29 interest earned or investment of money in the Heir Finder
30 Recovery Fund shall be credited at least semiannually to the
31 fund. No money may be appropriated from the General Revenue

1 Fund for payment of any expenses incurred under this act, and
2 none of these expenses may be charged against the state.

3 (13) CONDITIONS OF RECOVERY; ELIGIBILITY.--

4 (a) Recovery from the Heir Finder Recovery Fund may be
5 obtained as follows:

6 1. Any aggrieved person is eligible to receive
7 recovery from the Heir Finder Recovery Fund if the department
8 has issued a final order directing an offending licensee to
9 pay restitution to the claimant as the result of the licensee
10 violating, within this state, any provision of subsection (8)
11 or any rule adopted by the department and if the department
12 determined that the order of restitution cannot be enforced;
13 or

14 2. Any aggrieved person who obtains a final judgment
15 in any court against any licensee to recover damages for any
16 actual loss that results from the violation, within this
17 state, by a licensee of any provision of subsection (8) or any
18 rule adopted by the department may, upon termination of all
19 proceedings, including appeals and proceedings supplemental to
20 judgment for collection purposes, file a verified application
21 to the department for an order directing payment out of the
22 Heir Finder Recovery Fund of the amount of actual loss in the
23 transaction that remains unpaid upon the judgment. The amount
24 of actual loss may include court costs, but shall not include
25 attorney's fees or punitive damages awarded.

26 (b) The amount paid from the Heir Finder Recovery Fund
27 may not exceed \$50,000 per claim or claims arising out of the
28 same transaction or auction or an aggregate lifetime limit of
29 \$100,000 with respect to any one licensee. For purposes of
30 this paragraph, heir finding activities conducted under a
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1 single contract or agreement shall be considered continuous
2 even though conducted at more than one time or place.

3 (c) A claim for recovery from the Heir Finder Recovery
4 Fund shall be made within 4 years from the time of the act
5 giving rise to the claim or within 4 years from the time the
6 act is discovered or should have been discovered with the
7 exercise of due diligence; however, in no event may a claim
8 for recovery be made more than 6 years after the date of the
9 act giving rise to the claim.

10 (d) The department shall not issue an order for
11 payment of a claim from the Heir Finder Recovery Fund unless
12 the claimant has reasonably established to the department that
13 she or he has taken proper and reasonable action to collect
14 the amount of her or his claim from the licensee responsible
15 for the loss and that any recovery made has been applied to
16 reduce the amount of the claim on the Heir Finder Recovery
17 Fund.

18 (e) Notwithstanding any other provision of this act,
19 no claim based on any act or omission that occurred outside
20 this state or that occurred before October 1, 2001, shall be
21 payable from the Heir Finder Recovery Fund.

22 (f) In case of payment of loss from the Heir Finder
23 Recovery Fund, the fund shall be subrogated, to the extent of
24 the amount of the payment, to all the rights of the claimant
25 against any licensee with respect to the loss.

26 (14) CLAIMS AGAINST A SINGLE LICENSEE IN EXCESS OF
27 DOLLAR LIMITATION; JOINDER OF CLAIMS, PAYMENT; INSUFFICIENT
28 FUNDS.--

29 (a) If the payment in full of two or more pending
30 valid claims that have been filed by aggrieved persons against
31 a single licensee would exceed the \$50,000 limit as set forth

1 in subsection (13), the \$50,000 shall be distributed among the
2 aggrieved persons in the ratio that their respective claims
3 bear to the aggregate of all valid claims or in any other
4 manner that a court of record may determine to be equitable.
5 Such money shall be distributed among the persons entitled to
6 share in it without regard to the order of priority in which
7 their respective judgments have been obtained or their claims
8 have been filed.

9 (b) Upon petition of the department, the court may
10 require all claimants and prospective claimants against one
11 licensee to be joined in one action, to the end that the
12 respective rights of all the claimants to the department may
13 be equitably adjudicated and settled.

14 (c) On June 30 and December 31 of each year, the
15 department shall identify each claim that the court orders to
16 be paid during the 6-month period that ended on that day. The
17 department shall pay the part of each claim that is so
18 identified within 15 days after the end of the 6-month period
19 in which the claim is ordered paid. However, if the balance in
20 the fund is insufficient to pay the full payable amount of
21 each claim that is ordered to be paid during a 6-month period,
22 the department shall pay a prorated portion of each claim that
23 is ordered to be paid during the period. Any part of the
24 payable amount of a claim left unpaid due to the prorating of
25 payments under this subsection shall be paid, subject to the
26 \$50,000 limit described in subsection (13), before the payment
27 of claims ordered to be paid during the following 6 months.

28 (15) PAYMENT OF CLAIM.--Upon a final order of the
29 court directing that payment be made out of the Heir Finder
30 Recovery Fund, the department shall, subject to the provisions
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1 of this act, make the payment out of the Heir Finder Recovery
2 Fund as provided in subsection (13).

3 (16) SUSPENSION OF JUDGMENT DEBTOR'S LICENSE;
4 REPAYMENT BY LICENSEE; INTEREST.--If the department is
5 required to make any payment from the Heir Finder Recovery
6 Fund in settlement of a claim or toward the satisfaction of a
7 judgment under this act, the department shall suspend the
8 judgment debtor's license. The licensee is not eligible to be
9 licensed again as either an heir finder or heir finder
10 business until the licensee has repaid in full the amount paid
11 from the Heir Finder Recovery Fund, with interest at the
12 current applicable rate.

13 (17) EXPENDITURE OF EXCESS FUNDS.--Subject to the
14 approval of the department with the concurrence of the
15 department, the department may expend excess moneys from the
16 Heir Finder Recovery Fund to fund publications that provide:

17 (a) Information concerning the department's activities
18 and administrative rulings.

19 (b) Distribution of laws, rules, and educational
20 information concerning the business of heir finding.

21 Section 2. This act shall take effect October 1, 2001.

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24 HOUSE SUMMARY

25 Provides for regulating heir finders. Requires licensure
26 of heir finders and heir finder businesses and provides
27 for administration by the Department of Business and
28 Professional Regulation. Specifies prohibited acts and
29 provides penalties. Provides for an Heir Finder Recovery
30 Fund as a separate account in the Professional Regulation
31 Trust Fund and provides for administration by the
department. Provides for duties and responsibilities of
the Treasurer. Provides for investing moneys of the fund,
uses of the fund, conditions for recovery from the fund,
eligibility for recovery. See bill for details.