



**TESTIMONY OF JODI SMITH
COMMISSIONER
North Dakota Department of Trust Lands**

Senate Bill 2048

**House Judiciary Committee
March 3, 2021**

Chairman Klemin and members of the House Judiciary Committee, I am Jodi Smith, the Commissioner and Secretary for the Board of University and School Lands (Board). I am here to testify in support of Senate Bill 2048.

The Department of Trust Lands (Department) is the administrative arm of the Board, serving under the direction and authority of the Board. The Board is comprised of the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The Department's primary responsibility is managing the Common Schools Trust Fund (CSTF) and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The Department manages five additional funds: the Strategic Investment and Improvements Fund, the Coal Development Trust Fund, the Capitol Building Fund, the Indian Cultural Education Trust, and the Theodore Roosevelt Presidential Library and Museum Endowment.

The Department also operates the Energy Infrastructure and Impact Office (EIIO), which provides financial support to political subdivisions that are affected by energy development. Assistance is provided through both the oil and gas impact grant program and the coal impact loan program. The EIIO also distributes energy and flood grants carried over from prior biennia.

Additionally, the Department administers the Uniform Unclaimed Property Act, N.D.C.C. ch. 47-30.1. In this role, the Department collects "unclaimed property" (uncashed checks, unused bank accounts, etc.), processes owners' claims and engages in holder compliance. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the CSTF.

In order to understand the significant role the Unclaimed Property Division (Division) plays within the Department, it is important to define the meaning of "unclaimed property," the processes involved, and its history across the nation and in North Dakota. In this context, the term "property" includes tangible assets, such as the contents of a safe deposit box, and intangible assets, such as uncashed checks and abandoned bank accounts. When these assets have been inactive for

a statutory dormancy period they become “unclaimed property” and are subject to unclaimed property law.

There are essentially two components of the Division: collections and claims. Each component plays a distinctly different, but equally critical, role in the Division.

The collection component addresses holder compliance and education, including the collection, documentation, and holder’s transfer of assets to the Division. N.D.C.C. § 47-30.1-01(7) defines a holder as “a person, wherever organized or domiciled, who is: a. In possession of property belonging to another; b. A trustee; or c. Indebted to another on an obligation.” Annually, any business or entity conducting business in the state of North Dakota is statutorily mandated to review its financial records to verify it is not holding any assets that are unclaimed. If the business or entity discovers that it is in possession of such an asset, it is required to attempt to locate the rightful owner using the best information available to it as the holder. After the expiration of statutory dormancy period and unsuccessful attempts to reunite the owner with the property, the holder must transfer the asset and all the identifying information to the Division as part of its “holder report”. Once the State has assumed custody of the asset, it is held in perpetuity by the Department, and the Division proceeds to attempt to reunite the unclaimed asset with its rightful owner or heir.

The claims component addresses the reuniting of inactive, lost, misplaced, or unclaimed assets with the rightful owner or heir. “Owner” is defined as “a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or that person’s legal representative.” N.D.C.C. § 47-30.1-01(12). Owners are required to submit documentation to the Division to establish ownership of the asset and verify the identity of the person filing the claim (the claimant).

In January 1975, Senate Bill 2079 was introduced relating to defining abandoned personal property, providing methods for the same to be taken into custody of the State; for its recovery by the rightful owner; for an administrator; for a penalty; and repeal of certain sections relating to unclaimed funds. The original bill proposed unclaimed property be administered by the Attorney General’s Office with the revenue generated benefiting the general fund. During committee deliberation in February 1975, it was determined there would be a division in the “state land commissioner’s office” known as the abandoned property office and the “state land commissioner” shall employ the “administrator” of the new unclaimed property office with the revenue from the interest earned benefiting the CSTF. The Forty-fourth Legislative Assembly passed Senate Bill 2079, creating North Dakota’s Unclaimed Property Division within the “state land commissioner’s office”.

Since 1975, the Division’s primary focus has been to reunite unclaimed property with its rightful owner. Due to the nature of unclaimed property, much of the property is reported to the Division because of a breakdown in communication between the holder and the owner, incomplete owner information, or inaccurate information, such as invalid mailing addresses. It is estimated that 1 in 7 North Dakotans have unclaimed property. There has been a steady increase in the amount of funds and reports received from holders, claims paid, and amount of funds returned to owners. The 2017-2019 biennium saw a total of 8,807 properties paid, resulting in \$7,355,430.95 returned to owners. Abandoned property reported to the Department totaled \$27,239,906.13 from the receipting of 5,365 holder reports and 67 safe boxes.

In 1954, the Uniform Law Commission developed the first Uniform Unclaimed Property Act in the United States, motivated by the importance of reuniting property with its rightful owner. Since its inception in 1954, the Act has been amended in 1966, 1981, 1995, and 2016, and adopted in some variation in all 50 states, Washington D.C., Puerto Rico, and three Canadian provinces. Every state has unclaimed property laws, which apply to all businesses, nonprofit organizations, government entities, and individuals who hold property owned by other persons or have fixed obligations to pay debts due to other persons.

In 1985, the Forty-ninth Legislative Assembly passed Senate Bill 2178 adopting the 1981 Uniform Unclaimed Property Act (1981 Act) with revisions. Since this time, the Division has complied with the 1981 Act. Although there have been revisions and additions to N.D.C.C. ch. 47-30.1, there has not been a complete overhaul of the chapter since 1985.

The Department is recommending the adoption of the 2016 Revised Uniform Unclaimed Property Act (RUUPA), which would result in the repeal of N.D.C.C. ch. 47-30.1 and the enactment of a new unclaimed property chapter at N.D.C.C. ch. 47-30.2. When reviewing the proposed legislation, you will note that the related sections of RUUPA are listed in parentheses after the new sections of N.D.C.C. ch. 47-30.2. RUUPA provides necessary updates to the 1981 Act that keep with technological innovation and recognize new forms of property not included in the 1981 Act. RUUPA is the result of more than three years of study and drafting. The drafting committee considered thousands of pages of comments from more than 100 interested parties during the drafting process. RUUPA contains beneficial changes for consumers, states, and holders. Additionally, the Department worked with the Uniform Law Commission, the North Dakota Statutory Committee, and other partnering agencies who will be directly impacted by the implementation of RUUPA.

Since 2016, five states have implemented RUUPA with revisions. Additionally, there are four states that currently have RUUPA introduced for adoption. The Department has consulted with several states to best understand lessons learned and modify RUUPA accordingly. The Department has also been working with the Uniform Law Commission to ensure the proposed modifications do not deviate from the intentions set forth through the drafting of RUUPA by the Uniform Law Commission. Attached is a table outlining the modifications the Department has made from the original RUUPA and the justification for the modification.

Some of the benefits of RUUPA are:

- RUUPA clarifies which types of intangible property are covered. The following types of intangible property are now specifically included: virtual currency, payroll cards, stored-value cards, municipal bonds, health savings accounts, commissions, employee reimbursements, and custodial accounts for minors.
- RUUPA provides specific dormancy periods and establishes dormancy periods for many types of property for the first time. For example, a three-year dormancy period was established for health savings accounts, custodial accounts for minors, and stored-owned value cards.
- RUUPA expands remedies for holders. If an administrator conducts an examination and determines that a holder is liable for unreported property, then the holder has several remedies under RUUPA. RUUPA provides for informal conferences between a holder and

the administrator. It also provides that a person in this state aggrieved by an audit that in any form requests payment of money or a civil penalty is entitled to a hearing before the board upon request. These provisions do not exist in the 1981 Act.

- RUUPA prioritizes information security. RUUPA establishes clear rules for the protection of confidential information and includes security-breach notification and response requirements.

N.D.C.C. §§ 47-30.2-04 through 47-30.2-14, as proposed, establish rules to determine if property is abandoned. Property is presumed abandoned if it is unclaimed by its apparent owner after a specified period of time (the dormancy period). The length of the dormancy period depends on the type of property. RUUPA establishes dormancy periods for some types of property that were not covered in previous versions of the Uniform Unclaimed Property Act, including health savings accounts, custodial accounts for minors, stored-value cards, and more. These sections also include rules for how and when the holder of the property must communicate with the apparent owner. RUUPA clarifies that property is not presumed abandoned if the apparent owner shows an interest in the property during the designated dormancy period. Some of the ways in which an apparent owner may show interest are by a record communicated by the apparent owner to the holder about the property, payment of a premium on an insurance policy, or deposit or withdrawal from an account at a financial institution.

N.D.C.C. §§ 47-30.2-15 through 47-30.2-20, as proposed, establish three priority rules to determine which state may take custody of property that is presumed abandoned. The first-priority rule grants custody to the state of the last-known address of the apparent owner, according to the holder's records. If there is no record of the address of the apparent owner, or the address is in a state that does not permit the custodial taking of the property, then the property is subject to custodial taking by the state of corporate domicile of the holder. The third-priority rule permits a state administrator to take custody of the property if (1) the transaction involving the property occurred in the state; (2) the holder is domiciled in a state that does not provide for the custodial taking of the property; and (3) the last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property.

Under N.D.C.C. §§ 47-30.2-21 through 47-30.2-29, as proposed, the holder of property presumed abandoned must send a notice to the apparent owner identifying the property and must file a report with the administrator identifying the property. Some of the changes RUUPA makes to the notice requirements include:

- Permitting the use of electronic notices;
- Requiring the notice to identify the property and its value, state that the property may be sold by the administrator, provide details for how to prevent the property from being delivered to the state, and establishing a deadline for when action must be taken by the owner to prevent the delivery of property to the state; and
- Providing that the holder is not required to include confidential information in the notice that can be used to verify the identity of the individual. See N.D.C.C. § 47-30.2-71, as proposed.

RUUPA also alters some of the filing requirements. For example, states may not require unclaimed property reports to be submitted in paper form. In addition, holders are authorized to

contract with third parties to report unclaimed property to the state administrator, but the holder remains liable for the failure of the third party to submit a complete, accurate, and timely report and to deliver unclaimed property to the state.

N.D.C.C. §§ 47-30.2-30 through 47-30.2-39, as proposed, describe how the administrator may take custody of unclaimed property and how it may sell it. Except for securities, RUUPA allows the administrator to sell the property three years after receipt, but it is not required to do so. Securities may be sold three or more years after the administrator receives the security and gives the apparent owner notice under proposed N.D.C.C. § 47-30.2-28. The administrator is prohibited from selling military medals or decorations awarded for military service. Instead, the administrator may deliver them to the state historical society of North Dakota or the agency that awarded the medal or decoration.

N.D.C.C. §§ 47-30.2-44 through 47-30.2-47, as proposed, direct the administrator to deposit all funds received under the Act into the CSTF, including proceeds from the sale of property as mentioned above. These sections also require the administrator to maintain records of the property.

N.D.C.C. §§ 47-30.2-48 through 47-30.2-53, as proposed, address various scenarios in which the administrator of one state would need to pay or deliver unclaimed property to another state, either because there is a superior claim to the property by the other state or the property is subject to the right of another state to take custody. Proposed N.D.C.C. § 47-30.2-50 discusses claims for the property by a person claiming to be the property owner and provides the administrator may waive the requirement to file a claim in certain circumstances.

N.D.C.C. §§ 47-30.2-54 through 47-30.2-62, as proposed, explain how an administrator may request property reports and how an administrator may examine records to determine if a person has complied with the Unclaimed Property Act. RUUPA requires every administrator to adopt rules governing procedures and standards for an examination.

N.D.C.C. §§ 47-30.2-65 through 47-30.2-66, as proposed, discuss the penalties if a holder fails to report, pay, or deliver property within the time required and if the holder enters into a contract to evade an obligation under RUUPA.

N.D.C.C. §§ 47-30.2-68 through 47-30.2-70, as proposed, govern the enforceability of an agreement between an apparent owner and a "finder" to locate and recover property. A signed record between the parties to designate the finder as an agent of the owner is required. The agent is then entitled to receive from the administrator all information concerning the property which the apparent owner would be entitled to receive, including information that would otherwise be considered confidential.

N.D.C.C. §§ 47-30.2-71 through 47-30.2-73, as proposed, address that no confidential information is required to be contained in the notice of a holder and provides requirements for security of information and steps that an administrator must take in the event of a security breach.

In April 2019, the Division implemented a new information technology system and simultaneously went live with a new website. The Division can now "fast track" eligible claims. This adds efficiency to the Division and returns funds to owners in a shorter time. Additionally, in January 2019 the Division implemented Administrative Rules. With the successful implementation of

Administrative Rules and a new information technology solution, the Division has seen significant increase in the ability to return funds to owners. The next step in creating greater opportunities to return funds to owners is updating the Uniform Unclaimed Property Act.

I look forward to working with the committee on these issues and will answer any questions.

**COMPARISON OF
2016 REVISED UNIFORM UNCLAIMED PROPERTY ACT (RUUPA)
AND PROPOSED N.D.C.C. CHAPTER 47-30.2**

RUUPA Section	Topic	Justification for Modification
Throughout	Use of the word Act	Revised to refer to this chapter at recommendation of Legislative Council
Throughout		Changed language to better reflect language used in North Dakota law or to add clarification without changing the meaning
Throughout		The new chapter of the Century Code will be 47-30.2. The section number of RUUPA was deleted and each section was given its own century code section number with the RUUPA section in parens. For example, 47-30.2-01(102). These internal references will be in the new code.
101	Short Title	Removed as not needed
102	Definitions	<p>- Throughout definitions, removed references to federal laws so that we would have stand-alone laws that would not have to be changed each time federal law is changed. In some instances, we inserted the text of the federal law rather than the reference</p> <p>- "Administrator" revised to retain current definition and clarify authority given under this chapter</p> <p>- Added "board" as the Unclaimed Property Division (UP Division) serves under the direction and authority of the Board of University and School Lands and to clarify authority given under this chapter</p> <p>- Added "cashier's check" as it was not addressed</p> <p>- Added "commissioner" to be defined as the Commissioner of University and School Lands and to clarify authority given under this chapter</p> <p>- "Confidential information" revised to "confidential record" to align with North Dakota open records statutes</p> <p>- Added "department" as the Unclaimed Property Division is a division of the Department of Trust lands (DTL)</p> <p>- "Financial organization" was revised to better align with how North Dakota law is worded</p> <p>- "Gift card" revised to differentiate from stored value cards</p> <p>- "Insurance company" revised to reference North Dakota statute</p> <p>- Maintained the current "mineral proceeds" definition</p> <p>- "Payroll card" was revised to differentiate between payroll card, stored value cards, and property types</p> <p>- "Property" revised to include in-store credit and mineral proceeds</p> <p>- "Record" - revised to align with current open records statutes</p>

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RUUPA Section	Topic	Justification for Modification
		<ul style="list-style-type: none"> - "Security" - revised to cite to North Dakota statutes rather than federal - "Stored value card" revised to differentiate from payroll cards, gift cards, and other property types
201	Abandonment	Various abandonment periods were changed to reflect abandonment periods provided in current North Dakota law
202	Tax Deferred Retirement Account Abandonment	Changed to reference North Dakota rather than federal law; modified regarding email communication; included tax-exempt
203	When Other Tax Deferred or Tax Exempt Account Presumed Abandoned	Included tax-exempt
204	Custodial Account for Minors	Revised to reflect current North Dakota statute and provide more clarity
205	Safe boxes	Revised to reflect current law
207	Gift card	Removed as gift card is excluded from the definition of property
210	Indication of Apparent owner Interest in Property	Revised to clarify owner-generated activity is required
211	Knowledge of Death of Insured or Annuitant	Revised to align with North Dakota law
307	Burden of Proof to Establish Administrator's Right to Custody	Removed as not addressed in current law
401	Report Required by Holder	Removed requirement for paper report as UP Division requires electronic reporting under Administrative Rules; a holder may file a negative report
402	Content of Report	Revised as UP Division requires electronic reporting under Administrative Rules; revised the dollar amount from \$50 to \$25 as recommended by the North Dakota Auditor's Office
403	When Report to be Filed	Revised for clarification
501	Notice to Apparent Owner by holder	Revised to reflect current law; revised the dollar amount from \$50 to \$25 as recommended by the North Dakota Auditor's Office and to align with lowered aggregate amount
503	Notice by administrator	Revised the dollar amount from \$50 to \$25 as recommended by the North Dakota Auditor's Office and to align with lowered aggregate amount; incorporated reference to publication in biennial report as already provided in the biennial report and to maintain consistency throughout DTL; provided more information as to the website to provide the owners more opportunity to recover their property

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RUUPA Section	Topic	Justification for Modification
602	Dormancy charge	Dormancy charge for all property types combined and moved to this section 602; revised wording to clarify
603	Payment or Delivery of Property to Administrator	Revised to reflect that tangible property is due at the time of the holder report
604	Effect of Payment or Delivery of Property to administrator	Revised to add more clarity as to values for indemnification and liability purposes
605	Recovery of Property by Holder from Administrator	Revised as North Dakota is not an interest-bearing state for purposes of unclaimed property claims; revised as UP Division is not subject to the adjudicative process under N.D.C.C. ch. 28-32
607	Crediting Income or Gain to Owner's Account	Revised as North Dakota is not an interest-bearing state for purposes of unclaimed property claims
701	Public Sale of Property	Removed publication requirements of a public sale to gain wider exposure by advertising on the website
702	Disposal of Securities	Revised as unduly burdensome as worded and has a negative impact on the trusts
703	Recovery of Securities or Value by Owner	Removed because unduly burdensome as worded and has a negative impact on the trusts
705	Military Medal or Decoration.	Revised to remove the federal reference and to keep the property in the state
801	Deposit of Funds by Administrator	Revised to comply with requirements of North Dakota law and clarify authority given under this chapter; addressed comments made by the drafters of RUUPA
803	Expenses and service charges of administrator.	Removed the RUUPA language and instead incorporated language regarding Deposit of Funds – Continuing Appropriation to comply with requirements of current North Dakota law and clarify authority given under this chapter
903	Claim for Property by Person Claiming to be Owner	Revised to enhance efficiency of fast tracking through UP Division's computer system; considered comments made by the drafters of RUUPA
904	When Administrator Must Honor Claim for property	Revised to allow for future payment of the claim
905	Allowance of Claim for Property	Revised to require agencies to submit a claim, rather than the administrator seeking out the agencies
906	Action by person whose Claim is Denied	Revised to reflect the notice requirement of N.D.C.C. § 32-12.2-04 and considered the comments made by the drafters of RUUPA regarding public policy of the State
1003	Rules for Conducting Examination	Revised to allow for estimation

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RUUPA Section	Topic	Justification for Modification
1004	Records Obtained in Examination	Revised to reflect other similar law guiding the Department (particularly N.D.C.C. § 44-04-18.29) and to reflect current North Dakota open records law
1007	Report to Person whose records were Examined	Revised to add clarification
1008	Complaint to Administrator about Conduct of Person Conducting examination	Revised to add clarification
1009	Administrator's Contract with Another to Conduct Examination	Removed as covered by procurement law
1010	Limit on Future Employment	Removed as cannot enforce in North Dakota
1011	Report to Administrator by State Official	Removed as state law requires a biennial report which is addressed in 47-30.2-28(3)(a)
Article 11	Determination of Liability; Putative Holder Remedies	Removed and 47-30.2-75 added to reflect current law (47-30.1-32) as it relates to holder appeals
1201	Judicial Action to Enforce Liability	Removed as the UP Division is not subject to the adjudicative process under N.D.C.C. ch. 28-32 and 47-30.2-75 added to incorporate current law (47-30.1-32) as it relates to appeals
1203	Action Involving Another State or Foreign Country	Revised to not handle lawsuits on behalf of other states; revised in accordance with North Dakota law – continuing appropriations
1204	Interest and Penalty for Failure to Act in Timely manner	Revised to align for consistency across DTL divisions
1206	Waiver of Interest and penalty	Removed and 47-30.2-67 added to align for consistency across DTL divisions
1301	When Agreement to Locate Property Enforceable	Revised to reflect current law and better protect the property of our citizens
1302	When Agreement to Locate Property Void	Revised to reflect current law and better protect the property of our citizens
1303	Right of Agent of Apparent owner to Recover Property held by Administrator	Revised as the right is granted through other legal avenues (Power of Attorney)
1401-1407	Confidentiality and Security of Information	Removed 1401, 1402, 1403, and 1404 as these are adequately covered under N.D.C.C. ch. 44-04. Revised 1405, 1406, and 1407 based on current North Dakota open records law

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RUUPA Section	Topic	Justification for Modification
1408	Indemnification for Breach	Removed based on consultation with Risk Management Division and the comments section of the RUUPA
1501	Uniformity of Application and construction	Removed as not needed
1502	Relation to Electronic Signatures in Global and National Commerce Act	Removed as not needed
1503	Transitional Provision	Revised to incorporate language in current law (47-30.1-37)
1504	Severability	Removed as there is a general reference to this in the North Dakota Century Code
1505	Repeals; Conforming Amendments	Removed as not needed
1506	Effects of new Provisions – clarification of Application.	Removed as not needed