



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

Senate Bill 2048

**Senate Industry, Business and Labor Committee
January 20, 2021**

Chairman Klein and members of the Senate Industry, Business and Labor 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) reviewed the comments received both during the January 13, 2021 hearing and after the hearing on Senate Bill 2048 (SB 2048). Based on that review, the Department proposes the following revisions and provides the following explanations:

American Council of Life Insurers (ACLI)

Concerning ACLI comments regarding duplicate language as outlined in paragraph 4 on page 2 of the testimony provided to the Committee on January 13, 2021, for Death Master File (DMF) language, the Department proposes the following:

Page 24, line 5, replace “An insured or an annuitant is presumed dead if the date of the death of the” with “If no provision in chapter 26.1-55 establishes a time for validation of a death of an insured or annuitant, the insurance company shall make a good faith effort using other available records and information to validate the death and document the effort taken not later than ninety days after the insurance company has notice of the death.”

Page 24, remove lines 6 through 9

The amendment incorporates original language from the Revised Uniform Unclaimed Property Act of 2016 (RUUPA). Requirements under this proposed amendment will only be triggered if this timeframe requirement is ever removed from the North Dakota insurance code. Currently, North Dakota’s insurance code (N.D.C.C. § 26.1-55-02(8)) allows insurers twelve months to validate a death. This provision would not place a new or different burden on the insurer but is purely precautionary should the insurance code ever be silent on this issue. As we do not have control over the insurance statutes, this provision is important to the operation of Unclaimed Property and promotes return of property to the rightful owner. We submit to the insurance law; however, we need this to remain in SB 2048 in case that insurance law ever changes and fails to address this issue very relevant to unclaimed property.

Concerning ACLI's comments regarding the Administrator's right to conduct DMF comparisons as outlined in paragraph 4 on page 2 of the testimony provided to the Committee on January 13, 2021, the Department rejects the proposed revisions from the ACLI as they relate to Section 2, paragraph d on page 23, lines 10-16.

The Department has consulted with the Uniform Law Commission, the National Association of Unclaimed Property Administrators (NAUPA) and Administrators from other states regarding the provisions outlined in Section 2. Leaving in Section 2 allows the Department to continue to audit life insurance companies as necessary and provides an additional tool for the Administrator to audit life insurance companies. This language was challenged in other states and those challenges were successfully denied. To our knowledge, this language has been adopted through the RUUPA, or a modified version thereof, in Vermont, Colorado, Kentucky, Illinois and Tennessee.

This language is important to unclaimed property administrators and NAUPA and is a policy decision. The public policy decision reached in RUUPA is that the unclaimed property administrator should be allowed the use of the DMF as an audit tool. It is *not* a requirement that it be used in every audit; however, it should be a tool available to the auditor. Under North Dakota law, the Insurance Commissioner utilizes the DMF but not for the purpose of identifying unclaimed property that should be reported and remitted to the State. Rather, the Insurance Commissioner utilizes the DMF to determine whether there are proceeds that should be paid to insureds. It is not anticipated that the Insurance Department would want the responsibility of performing ad-hoc unclaimed property examinations for all insurance policies, but this is what the ACLI is suggesting by eliminating subsection d of Section 2. Further, there have been no complaints to the Department concerning abusive auditing or abusive DMF matching.

North Dakota Bankers Association (NDBA)

Concerning comments of the NDBA regarding the definition of cashier's check and dormancy issues of cashier's checks, we acknowledge the need for refinement in the definition of cashier's checks and propose the following amendment:

Page 9, line 2, replace "Is drawn by a financial organization on itself" with "Is purchased by a remitter and made payable to a designated payee"

Page 9, line 3, after "officer" insert "or employee"

Page 9, line 3, after "organization" insert "on behalf of the financial institution as drawer;"

Page 9, line 4, replace the period with a semi-colon

Page 9, after line 4 insert

"d. Is a direct obligation of the financial organization; and
e. Is provided to a customer of the financial institution or acquired from the financial institution for remittance purposes."

It is worth noting that retaining subsection c in the above definition would allow holders to report cashier's checks as single-owner properties (in the name of the payee) rather than as a multiple-owner property (in the names of both the remitter *and* the payee). This change greatly increases the Department's ability to return the property to the rightful owner.

Concerning comments of the NDBA regarding the discrepancy between the dormancy of cashier's checks and other checks, the Department also acknowledges the discrepancy between the dormancy of cashier's checks and other types of checks; thus, we propose the amendment below to make the dormancy period for all checks two years:

Page 15, line 17, replace "three" with "two"

It is important to note that cashier's checks currently have a three-year dormancy period. This change will allow consistency in all types of checks but would immediately put all financial institutions out of compliance and require them to report two years of cashier's checks, rather than one, in the next reporting cycle.

Concerning comments of the NDBA regarding payroll cards, the Department agrees to the proposed amendment as follows:

Page 15, line 12, after "A" insert "a payroll card or"

Page 15, line 12, after "a" insert "time"

Page 15, line 13, after "the" insert "date of"

Page 15, line 13, after the second "the" insert "time"

Page 15, line 13, after "deposit" remove the underscored comma

Page 15, line 13, after "deposit," insert "or the date of the last indication of interest in the property by the apparent owner, whichever is earlier;"

Page 15, line 13, after "deposit," replace "except" with "provided that"

Page 15, line 13, after "a" insert "time"

Page 15, line 15, after "owner" insert "has"

Page 15, line 16, after "renewal" replace the underscored semi-colon with ". If an apparent owner has another established account with the financial institution and has demonstrated interest in any such account under section 47-30.2-12, then all accounts must be considered active;"

For housekeeping purposes and to address the NDBA's comments regarding payroll cards, "payroll card" will be removed from Page 16, Line 9. Once the wages are transferred onto the payroll card, the employer no longer has an interest in those funds and the obligation to report those unclaimed funds rests with the issuing financial institution. The Department agrees to the proposed amendment as follows:

Page 16, line 9, replace "Amounts held on a payroll card, wages" with "Wages"

Concerning comments of the NDBA regarding automatic deposits or withdrawals, the Department agrees to the proposed amendment as follows:

Page 22, line 7, replace “organization” with “institution, including an automatic deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of dividends or interest; provided that the apparent owner has consented to such automatic deposit or withdrawal in a record on file with the holder at least once in the preceding five years;”

This change permits automatic deposits or withdrawals to be considered indications of apparent owner interest in property while offering protection against an account continuing unchecked in perpetuity such as when an apparent owner suddenly dies.

The Department is currently seeking clarification to determine whether the transitional provision, proposed N.D.C.C. § 47-30.2-74, should include an effective date of July 1, 2021 as written or if the date should be modified to August 1, 2021.

I look forward to working with the committee on SB 2048 and will answer any questions.