

2009 HOUSE JUDICIARY

HB 1156

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1156

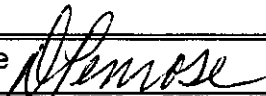
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/13/09

Recorder Job Number: 6927

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1156.

Linda Fisher, Unclaimed Property Administrator, ND State Land Dept.: Sponsor
(attachment).

Rep. Delmore: Is a year enough time to find someone.

Linda Fisher: That is already in statute, how to notify and find a person. They have 30 days after the termination of the lease. That 30 days elapses and under Unclaimed Property statute there would be another period of time, one year, at which time the money comes to us.

Rep. Koppelman: How do other entities, who can't find the person, handle this. Is there another place in statute that says that certain entities have to forward funds to you at a certain point.

Linda Fisher: That is found in the Unclaimed Property statute. If you look at section 2 of the bill, this is the specific statute where we want to include this. Right now it only deals with utility deposits; Section 47-30.1.

Rep. Klemin: Once the landlord has applied all the funds that are due on the security deposit for unpaid rent and damages, anything left has to be sent to the tenant. Are we talking only

about a situation where the money came back to the landlord because there wasn't any tenant found at an address, and it wasn't forwarded. Is that the situation.

Linda Fisher: Yes.

Rep. Wolf: The wording on section 2, on page 2, where it talks about the 1 year lease. What happens when your lease is up and you are now on a month-to-month basis. Does the year start running when the lease is up, is it considered abandoned because you are not under your agreement any longer or are you?

Linda Fisher: All the rights for the tenant are the same. The year would run after you move out.

Rep. Koppelman: Who is required to remit funds to your office.

Linda Fisher: Everyone is required to remit unclaimed monies. There are very few exemptions or exclusions from the Unclaimed Property Reporting requirement. Cooperatives don't have to remit unclaimed funds. MDU is a publicly traded company, they do report.

Rep. Koppelman: It seems one of the issues is getting the word to the people, and a lot of times people don't know that there is money owing.

Linda Fisher: We contact people numerous times if we can't find them.

Rep. Koppelman: Do small private businesses have to remit if they find extra money lying around.

Linda Fisher: No, because they don't know who it would belong to. We target companies who willfully failed to report. We know the requirements, but we do have small companies who report to us too. We have links on our website that list the requirements. We are the last resort when a person can't be found. Before we get the unclaimed property, the business is supposed to make a concerted effort to find the person and get the property returned to them.

Between those efforts and what we do, we have a pretty good record of getting property back to people.

Rep. Koppelman: So every citizen and business is obligated to send unclaimed property to your department, when the person can't be located. Is that fair.

Linda Fisher: Is that 100% fair, I don't know. I would say that it is 99% fair, because the person is due their property. There are some pretty specific exemptions, but by and large the unclaimed property statute covers everything where the money doesn't belong to.

Chairman DeKrey: Do you ever get the sense that the businesses use you to get their unclaimed property returned to people.

Linda Fisher: Absolutely. We aren't supposed to be a dumping ground; however, if they choose to dump on us, it never gets taken by the Trust Fund, it's always there for the owners.

We live off the interest, lack of a better term.

Rep. Hatlestad: Say you are dealing with payroll checks, etc. and they expire in 90 days, what happens then.

Linda Fisher: If the check would be returned to the business by the person after the expiration, the business would have to honor it. But the check is not sent to us for at least two years. So in that interim, hopefully the problem could be resolved, even though the check said 90 days. That 90 day expiration period does not provide a loophole so that the business can keep the funds after that time.

Rep. Hatlestad: What happens to the check at Unclaimed Property, is the money lost.

Linda Fisher: The money is sent from the business. It stays in the trust fund, if I can prove it's mine with my social security number and even if it's 15 years later, I can claim it.

Rep. Hatlestad: So you cash the check.

Linda Fisher: We cash the check from the business, and it's not the check that says 90 days on it. That check went to the person, but it wasn't cashed. So the funds are sent to the Unclaimed property division.

Rep. Klemin: On the bill, it seems to imply that the lessor is to hold these funds for a year, and at the end of that time, then they send them to your office. Is that the intention, or can they send them to your office sooner.

Linda Fisher: There is a provision in the Unclaimed Property statute that allows us to take property earlier; we could take it earlier. In the statute there are period of dormancy for different types of accounts. We want the business and customer to get the matter resolved.

Rep. Klemin: Would it be better to say that sort of thing in this bill, because people might not be looking at that. I'm thinking that some of the larger landlords might have thousands of units, and now we an accounting problem as to when 1 year is up on each one of those apt. leases, so that they have to keep track, like a tickler file on every one of these so that when one year is up we've got to remember to send it to you. If they aren't able to find that person and send it back right away, then that would simplify things for them.

Linda Fisher: The way it would be handled, under Unclaimed Property statute, you report one time a year and you report on November 1 as of June 30th. Those dates are found in another part of the statute.

Rep. Koppelman: What is the penalty if someone holds a check and doesn't send it in within the time limits.

Linda Fisher: If you go further into the statute it talks about interest, how it can be applied to property that comes in late. ND does not have an aggressive interest policy. I can tell you that there are a lot of state unclaimed property offices across the nation that start the clock on day

1. If we do an audit, if we end up going out and doing an audit and we find property that we had to look for and find it ourselves, we apply interest.

Rep. Koppelman: What would prompt you to do an audit.

Linda Fisher: There are several things that trigger an audit. First, the size of the company, second, would be the company might have a lot of turnover. We contact the company first to see if they have a good reason why they haven't filed for a while. Perhaps they had a new employee or other explanation as to why they haven't reported lately. If we send two or three notices and don't receive a response, that may trigger an audit.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1156

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/20/09

Recorder Job Number: 7328

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1156. What are the committee's wishes.

Rep. Griffin: I move a Do Pass.

Rep. Wolf: Second.

12 YES 1 NO 0 ABSENT

DO PASS

CARRIER: Rep. Griffin

Date: 1/20/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1156

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				

Total (Yes) 12 No 1

Absent 0

Floor Carrier: Rep. Griffin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 20, 2009 3:57 p.m.

Module No: HR-11-0621
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1156: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1156 was placed on the
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1156

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1156

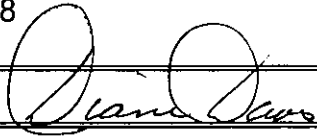
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/18/09

Recorder Job Number: 9658

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to reporting security deposits under the Uniformed Unclaimed Property Act.

Linda Fisher – Unclaimed Property Administrator – see written testimony.

Senator Nething – Asks how this bill will deal with the unclaimed security deposits.

Fisher – Responds, the property manager would go through all the steps laid out in the Real Estate law to say you send a notice to the person, if it comes back undeliverable or for some reason didn't get cashed, then that money would get reported to the unclaimed property division and they would post it on their web site and hope that it would returned to the rightful owner.

Senator Nething – Asks, currently you have no authority to post it?

Fisher – Says they do have authority to post it, the real estate statute doesn't say it has to come to them. The unclaimed property statute only refers to utility deposits and not other deposits, so they are trying to make it more broad.

Senator Nelson – Asks what defines rights and services.

Fisher – Security deposit on a rental agreement, or deposit on utilities or cable, or whatever requires a deposit of some sort.

Senator Olafson – Asks why her division is under the state land department.

Fisher – States, the Land Dept. mission is to fund public education and the unclaimed property statute funds public education with the interest that is earned on funds that are never claimed.

Senator Fiebiger – Have you heard anything from property management companies affected by this and in terms of numbers what we're talking about.

Fisher – They have not heard anything from property management but it was their idea to do this. As far as numbers she says there is no way to tell.

Senator Nelson – Currently do you guess the practice now is that when the checks come back they just keep the money?

Fisher – Guesses that is true.

Senator Olafson motions do pass

Senator Lyson seconds

Vote – 6-0

Senator Nething will carry

Date: 2/18/69
Roll Call Vote #: 1

1156

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

☒ Do Pass

☐ **Do Not Pass**

☐ Amended

Sen Olson

Sen. Lyman

[illegible]

(Yes) 6 (N) 0

Absent

Sen. Nothing

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1156: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1156 was placed on the
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1156

**TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota State Land Department**

IN SUPPORT OF HOUSE BILL NO. 1156

**House Judiciary Committee
January 13, 2009**

*Same to
given to
Senate.*

The Uniform Unclaimed Property Act (the Act), enacted in all 50 states and in effect in North Dakota since 1975, requires that after a certain period of time has elapsed, unclaimed financial assets must be reported to State Unclaimed Property Administrators. The unclaimed assets we are referring to in this context generally consist of uncashed vendor or payroll checks, dormant bank accounts, undeliverable securities, etc.

From time to time, unclaimed property statutes overlap and interact with laws governing other industries. Such is the case in what is being addressed in HB 1156.

Several months ago, I was contacted by the accounting manager of a local real estate management company looking for direction on how to handle unclaimed security deposits for someone they could not locate. He told me that Subsection 2 of NDCC 47-16-07.1 currently provides landlords and real estate management companies with specific requirements for dealing with security deposits, right up to the point of what should be done with those that ultimately go unclaimed.

Being somewhat familiar with the concepts of unclaimed property, he wanted to know whether unclaimed security deposits for rentals would be subject to reporting requirements. When you consider the intent of the unclaimed property statutes, which exist to help owners claim what is already theirs, the answer is "yes".

Unclaimed property statutes have always contained a provision for the reporting of unclaimed utility deposits, however, other types of security deposits, including those required by landlords and real estate management companies, have never been specifically addressed.

Section 1 of this bill seeks to provide clarification and close that loop on the existing security deposit statutes.

Section 2 of the bill amends current unclaimed property statutes to expand the authority of collection and to coincide with what is being proposed in Section 1 of the bill.

With those explanations, I respectfully request a "do pass" recommendation on HB 1156 and would be happy to answer any questions you might have.