

2009 HOUSE EDUCATION

HB 1137

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1137

House Education Committee

☐ Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6997

Committee Clerk Signature

*Carmen Hart*

Minutes:

**Linda Fisher, Unclaimed Property Administrator, North Dakota State Land Dept.,** presented the attached testimony. **(Attachment 1)** She also mentioned that there are a few state unclaimed property offices that have adopted legislation like this proposed, and it has been working okay.

**Rep. Jerry Kelsh:** Are these people, Group 2, researching this to find that property or are they just coming up accidentally? The reason for my question is would some property go undiscovered if they were limited in their incentive to go after this or not?

**Linda Fisher:** If I understand your question correctly, you are asking how Group 2 is finding this property. What they are doing is going to Business A, Business B, and Business C and saying we would like to take care of your "due diligence" requirements. In some cases and, I know this to be a fact, you don't have to pay us to do that. We will get paid from the money we use from our contracts. It is kind of a way around for the holders, the businesses, too. They need to do this "due diligence" but what they are choosing to do is hire a third party but not pay that party and the party that is out there is fending for themselves trying to make as much off these contracts as they can. They are going to businesses and contracting with the business, and then the business provides them with these slips.

**Rep. Jerry Kelsh:** Would it hinder people from ever getting this property? I understand it goes through the state after awhile, but does the state make a direct contact with the person? If they can, I guess they do. What if they can't?

**Linda Fisher:** I can't promise that we contact all the people but if you look at that list on page 1 that we do implement to try and get the word out on this property. There is a good chance. All I can say is that the state of North Dakota has one of the highest rates of return in the nation for unclaimed property in terms of what we collect and pay back to owners—the top 5.

**Vice Chair Lisa Meier** asked how often they get calls.

**Linda Fisher:** It kind of goes in cycles. The attached one is a recent one, although I have been visiting with this family for awhile now. The date of that letter was in 2007 when they were contacted. The finders have been sending monthly postcards—can we help answer some questions? Basically, why aren't you signing? Hurry up because pretty soon we have to turn this over. We get a lot of calls not necessarily with finders but people who get different correspondence. A lot of people are getting postcards saying send \$10 or \$15, and we will tell you about some unclaimed property. They send \$15 and they get a list of unclaimed property offices. They just get a list of offices to contact. There are a lot of quality scam type things going on with e-mails, fraudulent websites, where property gets put out there. You could put in the name Mickey Mouse and it would come out that there is a property. I am getting a lot of those kinds of calls too. Specifically with these, we probably get a couple a month from people saying I received a letter, and I am not sure what I should do. I don't know if this is legitimate because it is so cryptic. How would I feel if I got a letter saying for \$3,300 I can give you \$10,000? I would probably be skeptical of that too without any other essential information put in there.

**Vice Chair Lisa Meier:** Are most of these finders from out of state? How many finders do we have in the state of ND?

**Linda Fisher:** We are not currently working with any.

**Rep. Mike Schatz:** You said we are not the first state to do this. How many states do it, and which ones are they?

**Linda Fisher:** There are three states, I believe—Illinois, Tennessee, and I am not sure of the third. I think there are a couple of states that have pending legislation such as ours. At a recent national meeting for unclaimed property administrators, there was a lot of talk about statutes like this amongst all the administrators saying to let them know how it turns out, because they think something like this needs to be done as well.

**Rep. Bob Hunsakor:** The locators in Group 2 that you referred to—is this something that is just surfacing? Has it been there for some time, or all of sudden, it's there and you see it even escalating in the future?

**Linda Fisher:** Yes, it is kind of a newer thing. This is one of the newer issues that have come up in the realm of unclaimed property. It has not been around for a long time, and I expect that it will increase, because it helps the holder take care of business, basically, at no cost to them. It does get property back to people which is a good thing. It's just that it is a little bit—it hides things from people. It's not really on the up and up as far as being forthright with all the information that someone should have.

**Rep. Phillip Mueller:** What happens if we have some folks that continue to do this—the second locator kind of thing if this bill passes? I do not see any penalty phase or any reason not to continue to do it even though there is a law here. Usually what you end up with, unless there is a penalty, the law doesn't mean much.

**Linda Fisher:** They had discussed this at great length when drafting this bill. She had this discussion with Parrell Grossman from the Attorney General's Office, about the consumer protection standpoint. The only thing they are hoping to accomplish here is that if somebody calls them with one of these agreements, she can tell them to go back to their locator and tell them that what they are doing is against the law. This would be one way to get started and get it fixed as best they can at this point. If we had suggestions for penalties, she would certainly be willing to work with us on anything there. The fact is they can't find them all. They can't find any of them if people don't come to them with these agreements and say what is this? This way if she gets a letter like this, she can directly contact that locator from their office and say stop this. If they choose not to, she supposed they could take them to court if they found it to be a problem. Of course, the owner always has the right too if they had the law on their side to take the locator to court. They now have something in statue to back them up to say you can't make me do this because you are not telling me the whole story here.

**Chairman Kelsch:** What they are doing currently is not against the law?

**Linda Fisher:** It is not.

**Chairman Kelsch:** All you are doing is asking them to provide more information. I would be a little bit hesitant the first time around to put a penalty in there unless it continues to be an issue considering the fact that what they are doing is not against the law in the first place.

**Linda Fisher:** That's correct. We talked about that an awful lot because the first thing you are doing when we put this together is saying well, so what if there is not a penalty provision? Is it going to change anything? We are hoping that it would change something. It would give us the ability to contact them saying you can't do this in our state. Feel free to operate here but you need to let these people know the bigger picture.

**Parrell Grossman, Director of Attorney General's Consumer Protection Antitrust**

**Division** appeared in support of this bill. He thought this is good public policy and from the perspective of consumer protection purposes, good legislation. He thinks it would untreat all the parties fairly. They discussed the possibilities of penalties at length, and in the end, they decided the penalty wasn't appropriate. He thought a good argument could be presented that if in fact a consumer entered into one of these agreements and this chief locator did not follow the requirements of the law, he thought, on behalf of the attorney general, he could present the case that it was a deceptive practice because of this particular legislation. If they had some difficulty in enforcing the law, they could come back at a future session and ask the legislature to provide specific legislation as outlined in the consumer protection law. For that reason they opted not to make that recommendation. He did anticipate that there is a possibility that they would have to enforce this if somebody enters into an agreement and they didn't comply with the law, then the attorney general might become involved. This is typical, more often than not, the company in this case, the previous chief locator company, would likely agree to make some sort of refund when the attorney general's office becomes involved.

**Chairman Kelsch:** It would give us some time to see how the law works and to see if they are complying. We know that we are coming back in two years so you can always come and visit us again.

**Parrell Grossman:** Exactly. That was almost identical discussion we had. Please don't place this responsibility on my office.

There was no opposition.

The hearing was closed on HB 1137.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1137

House Education Committee

☐ Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6999

Committee Clerk Signature

*Carmen Hart*

Minutes:

**Vice Chair Lisa Meier** made a motion for a Do Pass on HB 1137. **Rep. Corey Mock**

seconded it. **14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING.** **Rep. Jerry Kelsh** is the carrier of the bill.

Date: 1-14-09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1137

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Vice Chair Meier Seconded By Rep. Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman RaeAnn Kelsch	✓		Rep. Lyle Hanson	✓	
Vice Chairman Lisa Meier	✓		Rep. Bob Hunsakor	✓	
Rep. Brenda Heller	✓		Rep. Jerry Kelsh	✓	
Rep. Dennis Johnson	✓		Rep. Corey Mock	✓	
Rep. Karen Karls	✓		Rep. Phillip Mueller	✓	
Rep. Mike Schatz	✓		Rep. Lee Myxter	✓	
Rep. John D. Wall	✓				
Rep. David Rust	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. J. Kelsh

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



**REPORT OF STANDING COMMITTEE (410)**  
January 14, 2009 2:48 p.m.

**Module No: HR-07-0337**  
**Carrier: J. Kelsh**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1137: Education Committee (Rep. R. Kelsch, Chairman)** recommends **DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1137 was placed on the  
Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1137

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1137

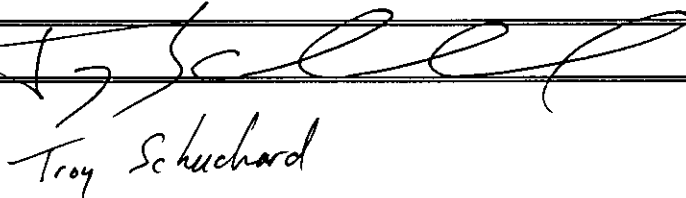
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9687,10449

Committee Clerk Signature



Troy Schuchard

Minutes:

**Linda Fisher:** Unclaimed Property Administrator, ND State Land Department: Written testimony in favor of House Bill 1137.

**Chairman Klein:** It's consumer protection. As you read through this and give that example it certainly is would be alarming to know that someone could be taken for whatever. I am assuming not knowing that that's the way it's the only way they're going to get their money.

**Linda Fisher:** It does happen. I don't know how often it does happen of course because if someone signs a contract like this gets their money we typically don't know about it.

**Senator Nodland:** Could you give us some examples?

**Linda Fisher:** Yes, securities, old bank accounts and uncashed checks are some.

**Senator Nodland:** Where is the attorney for these matters?

**Linda Fisher:** There might not be an estate. In the unclaimed property law, it is suppose to be reported. The person who has the property is to find out who it belongs to.

**Senator Nodland:** How do you regulate of know about these instances.

**Linda Fisher:** Only if someone notifies us.

**Senator Nodland:** The bill has provisions of what I must do. How do I know that I have to go the State Land Department?

**Linda Fisher:** It's on the second page of the bill. We have an audit program. Companies have to find the owner of the property. If you are a business owner you must try to get this off your books before we come to you. We deal with money and securities.

**Senator Andrist:** Do these headhunters help the people find money that you wouldn't find?

**Linda Fisher:** They do. They will be looking at the big companies.

**Senator Wanzek:** Maybe these people. I see it as a private market approach. No one is forcing them to do business with them. If they truly are going to follow this law why would I go through the trouble of searching and investigating what would encourage them to still do this if they have to give them all the information in the contract?

**Linda Fisher:** There are some people who are still going to sign contracts. We are not opposed to the finders, just the way they are going about it.

**Parrell D.Grossman:** Director of the Attorney General Consumer Protection: When we discussed this legislation. I am not sure there is a real down side. I don't know if there's a good reason why the rules should be any different. Why would we cap one and not the other? It goes beyond the original intent. It won't be the first time that a legislative committee has improved on legislation of any state agency. It's a valid consideration and a possibility it could be on the table.

**Senator Wanzek:** Do life insurance policies go unclaimed?

**Parrell D.Grossman:** I am sure that does happen. We discussed whether there should be some more teeth in this legislation. We ought to see how this works first before we add anymore law to it.

Discussion continued on the bill and changes that could be made to the bill now.

**Chairman Klein:** Closed Hearing.

**Chairman Klein:** Opened discussion on HB 1137

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Senate Industry, Business and Labor Committee

Bill/Resolution No. 1137

Hearing Date: February 25, 2009

**Senator Wanzek:** Moved for a Do Pass on HB 1137

**Senator Andrist:** Seconded

**Chairman Klein:** Motion for a Do Pass 7-0, Senator Nodland to carry.

Date: 3/9  
Roll Call Vote #: 1

## Senate

## Industry, Business and Labor

**Legislative Council Amendment Number**

☒ **Pass**

☐ **Do Not Pass**

☐ **Amended**

Motion Made By Senator Wanzek Seconded By Senator Andrist

[illegible]

Total (Yes) 7 No 0

Absent 6

Floor Assignment *Senator Nodland*

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

**REPORT OF STANDING COMMITTEE (410)**  
March 9, 2009 12:58 p.m.

**Module No: SR-42-4310**  
**Carrier: Nodland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1137: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends  
**DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1137 was placed  
on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1137



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Gary D. Preszler, Commissioner

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

**IN SUPPORT OF HOUSE BILL NO. 1137**

**House Education Committee  
January 14, 2009**

*Same testimony +  
handouts 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, unclaimed utility deposits, etc.

Once the property is received in our office, we begin outreach to provide opportunities for owners to claim their property. Our outreach takes many forms, including:

- 1) Annually publishing legal notices of names and posting generic unclaimed property ads in each official county newspaper.
- 2) Maintaining a no-charge web site where the public can search for property and can start the claim process. (This site can be searched by name or by city of last known address.)
- 3) Participating in a State's National Database which features multiple-state, unlimited, fee-free searches.
- 4) Appearing on television and doing radio interviews around the state to provide unclaimed property information to both claimants and holders.
- 5) Circulating e-mails to on-line user groups.
- 6) Making presentations at various community and business functions.
- 7) Displaying names of owners at fairs and tradeshows.
- 8) Purchasing address updates and doing direct mailings to owners of security-related property.

Occasionally, there are organizations or individuals who engage in the business of third-party outreach. Typically, they are called "heirfinders" or "locators". For purposes of this discussion we'll call them locators.

There are two different kinds of locators.

The first group of locators search public records such as posted and published unclaimed property lists for owners of unclaimed property. They then contact the owner and offer their administrative services for a fee - almost always a set percentage of the value of the property.

Unclaimed Property statutes in all 50 states regulate this group of locators. For instance, in North Dakota, locator fees cannot exceed more than 10% of the value of the property, and a locator cannot contract for services on any property that the State hasn't already had posted for a period of 24 months. The 24-month waiting period was designed to give the owners a chance to claim it from the State free of charge prior to being contacted by a locator and having to pay a fee to recover what is already theirs.

The next group, sometimes called pre-escheat locators, contract with business owners to complete the unclaimed property statute's due diligence requirements. "Due diligence" is a process where businesses are required to make one last attempt to contact owners before the property gets reported to the State. This provides an opportunity for third-party locators to circumvent unclaimed property laws by contracting with owners for a fee prior to the property being reported.

In North Dakota, pre-escheat locators operate under no guidelines whatsoever.

Attached to your testimony is a copy of an Agreement I recently received from the widow of a potential unclaimed property owner here in Bismarck. The cover letter she received with the Agreement states that the value of the property is in excess of \$10,000, and that the property has not yet been reported to the state. This particular locator has offered to "help" her recover the property - for a fee of 33.3%. Her signature of this Agreement would cost her no less than \$3,300 to claim what was already hers and she would be paying that fee even though ND law provides a method for her to recover her property free of charge once it is reported to the unclaimed property office.

The locator operates on the premise of "I know something you don't, and if you don't contract with me, you risk getting nothing". What we are proposing in HB 1137 would require locator Agreements to provide owners with enough information to help them make an informed decision on whether or not they want to sign the Agreement. If an owner wants to sign the agreement and pay a fee to get their property sooner rather than later, they would have that choice. However, if they did not want to pay a fee, they would have the information they need to claim it from the Unclaimed Property Division once it was reported to the State as required by law.

With those explanations, I respectfully request a "do pass" recommendation on House Bill No. 1137 and would be happy to answer any questions you might have.

HB 1137

March 28, 2007

Dear I

On November 14, 2006 I mailed you an agreement regarding the above-referenced account, so the recovery process could begin. If you have already signed and returned the agreement, please disregard this letter.

If you have not already signed and returned the agreement, I have enclosed another set for your signature. The account we have listed is still outstanding and there has still been no contact with our client. **This is not an account where proceeds have been turned over to the state.**

**The current value of this account exceeds \$10,000.** If this agreement is acceptable, please return one fully-executed copy in the enclosed self-addressed and stamped envelope and keep one copy for your records.

Please contact us to discuss in detail the procedure for recovering this dormant asset.

Sincerely,

HB 1137

AGREEMENT

Registration:

Whereas, \_\_\_\_\_ is a company that specializes in locating the heirs and/or beneficiaries of unclaimed assets, and

Whereas, the undersigned acknowledges that \_\_\_\_\_ has rendered investigatory and research services with respect to an asset to be claimed by the undersigned, and

AGREED:

1. \_\_\_\_\_ will receive a sum equivalent to **33.3%** of the gross value of the asset recovered as consideration for services rendered and that such fee will be deducted from the recovered asset.
2. That this is a contingent fee agreement based upon recovery and that in the event of the failure of \_\_\_\_\_ to recover the asset, the agreement shall be deemed null and void.
3. That the undersigned will not be called upon to advance any money for the payment of any costs incurred by \_\_\_\_\_ in the recovery process.
4. That \_\_\_\_\_ shall assist in the collection of the asset for the undersigned. In this regard, the undersigned agrees to sign, in the manner requested, all collection forms and documents furnished by \_\_\_\_\_ and to return them to \_\_\_\_\_ within 30 days from receipt thereof to facilitate the collection of the asset.
5. \_\_\_\_\_ will use its best efforts to locate additional assets.
6. The laws of the State of New York will govern with respect to all aspects of this agreement.

Date: 03/28/2007

Date: \_\_\_\_\_

\_\_\_\_\_  
Executrix

Address 1: \_\_\_\_\_

Address 2: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_