

1 **TESTIMONY OF DAVID HOGUE IN SUPPORT OF SB 2048**
2 **SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE**
3 **JANUARY 20, 2021**
4

5 Good morning Chairman Klein and members of the Senate Industry, Business,
6 and Labor Committee. My name is David Hogue. I am a North Dakota state senator
7 representing District 38, which includes northwest Minot and the city of Burlington. I
8 appear before your committee to seek support for Senate Bill 2048.

9 SB 2048 is another product of the National Conference of Commissioners of
10 Uniform State Laws and is endorsed by the North Dakota Uniform Law Commission, of
11 which I am a member, and a highly distinguished one at that. SB 2048 essentially
12 repeals North Dakota's current Unclaimed Property Act and replaces it with the new
13 revised Unclaimed Property Act. Its formal name is The Revised Uniform Unclaimed
14 Property Act (2016) ("Act"). It's not my intention to go through the new Act with the
15 Committee line by line. The stakeholder for Act is the Unclaimed Property Division of
16 our North Dakota Department of Trust Lands, a/k/a The State Land Board. Land Board
17 Commissioner Jodi Smith can review with you the important changes from the ND State
18 Department of Trust Lands perspective as the administrator of the Unclaimed Property
19 Fund.

20 One of the hallmarks of property is that it always has an owner. However,
21 sometimes the owner of property mislays, loses, or forgets he owns property. When
22 this happens, it is the duty of the "holder" of that property to first attempt to reunite the
property with its owner. When no valid property owner is identified, the state may sell

1 the property and use the funds for its own purposes, so long as it retains some of the
2 proceeds to honor claims of owners. A few of the notable changes in the Act are:
3 clarifying the tangible and intangible property types included in the Act; establishing new
4 events that trigger presumed abandonment; revising dormancy periods; refining the
5 duties of holders of unclaimed property; and adding security and confidentiality
6 provisions.

7 Mr. Chairman, while I said I would not go through the Act line by line, I do wish
8 to draw your attention to a provision you might not have been aware of. Page 15, lines
9 1-3 of SB 2048 tells you when you may presume that a check is presumed abandoned.
10 A checked is presumed abandoned two years after it is payable.

11 Chairman Klein and members of the Committee, I'm happy to stand for
12 your questions.

- 1 21. "Municipal bond" means a bond or evidence of indebtedness issued by a municipality
2 or other political subdivision of a state.
- 3 22. "Net card value" means the original purchase price or original issued value of a stored-
4 value card, plus amounts added to the original price or value, minus amounts used
5 and any service charge, fee, or dormancy charge permitted by law.
- 6 23. "Non-freely transferable security" means a security that cannot be delivered to the
7 administrator by the depository trust clearing corporation or similar custodian of
8 securities providing post-trade clearing and settlement services to financial markets or
9 cannot be delivered because there is no agent to effect transfer. The term includes a
10 worthless security.
- 11 24. "Owner" means a person that has a legal, beneficial, or equitable interest in property
12 subject to this chapter or the person's legal representative when acting on behalf of
13 and in the best interest of the owner. The term includes:
- 14 a. A depositor, for a deposit;
15 b. A beneficiary, for a trust other than a deposit in trust;
16 c. A creditor, claimant, or payee, for other property; and
17 d. The lawful bearer of a record that may be used to obtain money, a reward, or a
18 thing of value.
- 19 25. "Payroll card" means a record that evidences a payroll-card account that is directly or
20 indirectly established through an employer and to which electronic fund transfers of
21 the consumer's wages, salary, or other employee compensation, such as
22 commissions, are made on a recurring basis, whether the account is operated or
23 managed by the employer, a third-party payroll processor, a depository institution, or
24 any other person.
- 25 26. "Person" means an individual, estate, business association, public corporation,
26 government or governmental subdivision, agency, or instrumentality, or other legal
27 entity.
- 28 27. "Property" means tangible property described in section 47-30.2-08 or a fixed and
29 certain interest in intangible property held, issued, or owed in the course of a holder's
30 business or by a government, governmental subdivision, agency, or instrumentality.
31 a. The term includes:

- 1 (1) All income from or increments to the property; and
- 2 (2) Property referred to as or evidenced by:
- 3 (a) Money, virtual currency, interest, or a dividend, check, draft, deposit,
- 4 or payroll card;
- 5 (b) A credit balance, customer's overpayment, stored-value card, security
- 6 deposit, refund, credit memorandum, unpaid wage, unused ticket for
- 7 which the issuer has an obligation to provide a refund, mineral
- 8 proceeds, or unidentified remittance;
- 9 (c) A security except for:
- 10 (1) A worthless security; or
- 11 (2) A security that is subject to a lien, legal hold, or restriction
- 12 evidenced on the records of the holder or imposed by operation
- 13 of law, if the lien, legal hold, or restriction restricts the holder's or
- 14 owner's ability to receive, transfer, sell, or otherwise negotiate
- 15 the security;
- 16 (d) A bond, debenture, note, or other evidence of indebtedness;
- 17 (e) Money deposited to redeem a security, make a distribution, or pay a
- 18 dividend;
- 19 (f) An amount due and payable under an annuity contract or insurance
- 20 policy;
- 21 (g) An amount distributable from a trust or custodial fund established
- 22 under a plan to provide health, welfare, pension, vacation, severance,
- 23 retirement, death, stock purchase, profit-sharing, employee-savings,
- 24 supplemental-unemployment insurance, or a similar benefit;
- 25 (h) Intangible property and any income or increment derived from the
- 26 intangible property held in a fiduciary capacity for the benefit of
- 27 another person;
- 28 (i) Mineral proceeds; and
- 29 (j) An in-store credit for returned merchandise.
- 30 b. The term does not include:

- 1 (1) Property held in a plan described in Section 529A of the Internal Revenue
2 Code, as amended, [26 U.S.C. 529A];
3 (2) Game-related digital content;
4 (3) A loyalty card; or
5 (4) A gift card.
- 6 28. "Putative holder" means a person believed by the administrator to be a holder, until the
7 person pays or delivers to the administrator property subject to this chapter or the
8 administrator or a court makes a final determination that the person is or is not a
9 holder.
- 10 29. "Record" has the same meaning as defined in section 44-04-17.1.
- 11 30. "Security" means:
12 a. A security as defined in section 41-08-02;
13 b. A security entitlement as defined in section 41-08-02, including a customer
14 security account held by a registered broker-dealer, to the extent the financial
15 assets held in the security account are not:
16 (1) Registered on the books of the issuer in the name of the person for which
17 the broker-dealer holds the assets;
18 (2) Payable to the order of the person; or
19 (3) Specifically indorsed to the person; or
20 c. An equity interest in a business association not included in subdivision a or b.
- 21 31. "Sign" means, with present intent to authenticate or adopt a record:
22 a. To execute or adopt a tangible symbol; or
23 b. To attach to or logically associate with the record an electronic symbol, sound, or
24 process.
- 25 32. "State" means a state of the United States, the District of Columbia, the
26 Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or
27 insular possession subject to the jurisdiction of the United States.
- 28 33. "Stored-value card" means a card, code, or other device, including a merchandise
29 credit or rebate card, which is: