

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1021
Judiciary I Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1021-PCS35339-RO-48

Short Title: Property Finders.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED
AN ACT TO PROTECT OWNERS OF ABANDONED PROPERTY BY REGULATING
PROPERTY FINDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-62 reads as rewritten:

"§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;
- (2) The names and addresses of the holders of the abandoned property; and
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, but no later than June 30 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall ~~retain the lists on permanent file in their offices and shall make them~~ make the lists available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection



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1 (b) of this section has been distributed. This subsection shall not apply to owners of reported
2 property making inquiries about their property to the Escheat Fund."

3 **SECTION 2.** G.S. 116B-78 reads as rewritten:

4 "**§ 116B-78. Agreement to locate property.**

5 (a) ~~An agreement by an owner, covered by this section, the primary purpose of which is~~
6 ~~to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is~~
7 ~~being held by a clerk of superior court, or has been transferred to the State Treasurer by a clerk~~
8 ~~of superior court, is void and unenforceable if it was entered into during the period~~
9 ~~commencing on the date the property was presumed abandoned and extending to a time that is~~
10 ~~24 months after the date the property is paid or delivered to the Treasurer.~~Treasurer or the clerk
11 of superior court. Agreements under this section include power of attorney agreements and
12 agreements to sell or release interest in property that is presumed abandoned. This subsection
13 does not apply to an owner's agreement with an attorney to file a claim or special proceeding as
14 to identified property or contest the Treasurer's denial of a ~~claim.~~claim or a clerk's denial of a
15 petition.

16 (b) ~~An agreement by an owner, the primary purpose of which is to locate, deliver,~~
17 ~~recover, or assist in the recovery of property, covered by this section is enforceable only if the~~
18 ~~agreement~~ if it meets all of the following criteria:

- 19 (1) ~~is~~Is in writing, writing and clearly sets forth the nature of the property and
20 ~~the services to be rendered, rendered.~~
- 21 (2) ~~is~~Is signed by the owner, owner under oath.
- 22 (3) Describes the property, which includes the type of property, the property ID,
23 and the name of the holder.
- 24 (4) States that there may be other claims to the property that may reduce the
25 share of the owner.
- 26 (5) ~~and states~~States the value of the property before and after the fee or other
27 compensation has been deducted.
- 28 (6) States clearly the fees and costs for services. Total fees and costs shall not
29 exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value
30 of the property recovered, whichever is less.
- 31 (7) Discloses that the property is being held by the North Carolina Department
32 of State Treasurer's Unclaimed Property Program or in a clerk of superior
33 court's office, as applicable.

34 (c) If an agreement covered by this section applies to mineral proceeds and the
35 agreement contains a provision to pay compensation that includes a portion of the underlying
36 minerals or any mineral proceeds not then presumed abandoned, the provision is void and
37 unenforceable.

38 (d) ~~Any person who enters into an An agreement covered by this section that provides~~
39 ~~for compensation that is unconscionable is unenforceable except by the owner. with an owner~~
40 ~~shall be allowed to receive cash property, but not tangible property or securities, on behalf of~~
41 ~~the owner but shall not be authorized to negotiate the check made payable to the owner. An~~
42 ~~owner who has made an agreement to pay compensation that is unconscionable, or the~~
43 ~~Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a~~
44 ~~conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails~~
45 ~~in the action. Tangible property shall be delivered to the owner by the Treasurer, and securities~~
46 ~~will be reregistered into the owner's name.~~

47 (e) This section does not preclude an owner from asserting that an agreement covered
48 by this section is invalid on grounds other than as provided in subsection ~~(d)~~(b) of this section.

49 (f) Any person who enters into an agreement covered by this section with an owner
50 shall register ~~annually~~each calendar year with the Treasurer. The information to be required
51 under this subsection shall include the person's name, address, telephone number, state of

1 incorporation or residence, as applicable, and the person's social security or federal
2 identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the
3 Treasurer at the time of the filing of the registration information. Fees received under this
4 subsection shall be credited to the General Fund.

5 (g) In addition to rendering an agreement void and unenforceable, a failure to comply
6 with the provisions of this section constitutes an unfair or deceptive trade practice under
7 G.S. 75-1.1."

8 **SECTION 3.** Article 22 of Chapter 28A of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 28A-22-11. Agreements with heirs.**

11 Any agreement by an heir, unknown or known but unlocated, the primary purpose of which
12 is to locate or recover, or assist in the recovery, of a share in a decedent's estate shall be subject
13 to the provisions of G.S. 116B-78(b)."

14 **SECTION 4.** This act becomes effective October 1, 2009, and applies to
15 agreements entered into on or after that date.