

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1191*
PROPOSED COMMITTEE SUBSTITUTE H1191-PCS70385-RO-22

Short Title: Property Finders.

(Public)

Sponsors:

Referred to:

April 8, 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-78 reads as rewritten:

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

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

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

- (1) ~~is~~ Is in writing, writing and clearly sets forth the nature of the property and the services to be rendered, rendered;
- (2) ~~is~~ Is signed by the owner, owner under oath;
- (3) ~~and states~~ States the value of the property before and after the fee or other compensation has been ~~deducted.~~ deducted;
- (4) States that there may be other claims to the property that may reduce the share of the owner;
- (5) Describes the property, which includes the type of property, the property ID, and the name of the holder;
- (6) States clearly the fees and costs for services. Total fees and cost shall not exceed one thousand dollars (\$1,000) or twenty percent (20%) of the value of the property recovered, whichever is less; and



1 (7) Discloses that the property is being held by the North Carolina Department
2 of State Treasurer's Unclaimed Property Program or in a clerk of superior
3 court's office, as applicable.

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

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

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

19 (f) Any person who enters into an agreement covered by this section with an owner
20 shall register ~~annually~~ each calendar year with the Treasurer. The information to be required
21 under this subsection shall include the person's name, address, telephone number, state of
22 incorporation or residence, as applicable, and the person's social security or federal
23 identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the
24 Treasurer at the time of the filing of the registration information. Fees received under this
25 subsection shall be credited to the General Fund.

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

29 **SECTION 2.** This act becomes effective October 1, 2009, and applies to
30 agreements entered into on or after that date.