

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1171

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
January 21, 2013
Job 17476

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Unclaimed life insurance benefits

Minutes:

Attachments 1 and 2

Committee reconvened.

Hearing opened by Chairman Keiser.

Chairman Keiser, Representative from District 47: This bill is dealing with the unclaimed property part of life insurance. About 85% of all life insurance claims are satisfied in normal business transactions or claims. However, there are a great number of policies, maybe 15% or more, in which a claim is not submitted but a death has occurred. What to do with that situation? For years, life insurance companies and insurance regulatory departments operated on the basis that a claim must be submitted.

Gave example that created recognition of the problem. Some companies were putting together proprietary programs wherein they could go in and electronically audit different databases and receive some portion of anything that might be found. These firms did not initially go to insurance departments; they went to state treasurers and pointed out a missed opportunity, stating that the unclaimed life insurance money should be transferred from the life insurance companies into the state's unclaimed property division. Most states were in difficult financial positions and were looking for revenue, so many went for this plan. It tends to be the smaller policies which fall through the cracks. What did they propose to the treasurers? Within the Social Security Administration, there is what is called the death master file. It is a federal database, but you cannot easily gain access to it. With permission, it is possible to gain access and with the propriety programs, to determine whether or not there are people who have died who are in a company's database, and if they are, to go out and notify the heirs and recover the money for the heirs or to put it into the unclaimed property for the state and we cannot find the heirs. Companies, especially large insurance companies, began to use it to their advantage for annuity contracts but not for a match for life insurance contracts. To that point, they were not required to. This was initially at the state treasurers division, but the National Association of Insurance Commissioners, NAIC, who regulate insurance business in our state, became engaged. If it was wrong, it should have been red flagged under market conduct exams, but it never was.

6:58 What did the states do once it got to the insurance departments? They used the settlement agreement approach. They went to the large life insurers and negotiated a settlement. They said that insurers had been wrong to have used it asymmetrically, to use it for annuities and not for life insurance products. Significant settlements were negotiated with the large life insurance companies. The state of North Dakota participated in those and received significant dollars as part of that settlement. If you talk to insurance companies, they will not say that they were wrong but that they will make a settlement and will look for an alternative solution in the future.

8:06 Where do the dollars realized in the settlements go? They go to the states, not to the policy holders. Life insurance companies won't be too public about that because they are still in the period of settlements. The settlements have been coming down on a regular basis, and the regulators are now moving to the middle-level life insurers. The brakes were put on. An Ohio court case ruled that the settlement agreement approach may not be correct. There is pending in Kentucky a piece of litigation saying that it is unconstitutional in relation to contracts because the contracts state that upon submission of the claim, the payment will be made.

9:45 The NAIC has been very engaged. The National Conference of Insurance Legislators [NCOIL] has also become engaged in this issue. There isn't anyone who says that the asymmetrical use of the death master file, using it only when it is to your advantage, is right. This new technology is available, but should it be used? In most policy areas, when something is developed technologically, we require it to be used.

10:46 HB 1171 is a slight variation on a model piece of legislation developed by NCOIL. Chairman Keiser proceeded to highlight five definitions found in Section 1 of the bill.

12:24 Then we get into insurer conduct. Chairman Keiser read from the bill.

13:42 One of the things that was recognized is that especially for some very old group policies, they are still in force, but there is not adequate information available to track and find them, using the technology that is available. Chairman Keiser continued to read from the bill.

14:28 That's it in summary. We run it through the death master file and find a match. The insurance company is required to do a good faith effort to find the heirs. At some period of time and after a reasonable effort has been made, if they cannot be found, those dollars are escheated to the state unclaimed property, with any interest.

15:16 In contrast to that, when you escheat this to the state surplus property account, from the point of this transfer, there is no interest earned. The state retains that interest. By escheating it, the policy holder and their heirs lose access to that interest that could have been earned. But on the other hand, if you cannot find them by this time, it is unlikely you're going to find them easily.

15:48 The life insurance companies had a significant conference call last Friday, and following that I talked with some individuals on the call. There is a lot of division within

some of the life insurance companies. The large insurance companies agree that they should not have asymmetrical application. Some small or medium insurance companies feel this would be burdensome, and they are proposing a number of possible solutions. That still does not suggest to me that we should not have and pass this policy in North Dakota. It gives clarity, predictability, protection to the consumer. If we do not have something like this, then I am not sure what approach the companies will take in the future, given the court cases I described.

17:33 Representative Kasper: For clarification, this applies to life insurance. What about annuities?

Chairman Keiser: This applies to life insurance companies and the policies they write, which would include annuities, I believe. But it is restricted entirely to the life insurance industry.

Representative Kasper: On page 3, line 17, we are talked about applicable accrued interest. Is applicable accrued interest defined in statute? How would we determine what that interest rate would be?

Chairman Keiser: I believe that is in the contract. The minimum might also be in statute. It is a requirement for life insurance companies to pay interest from the time of the death going forward for monies not transferred immediately. There are times and cases when people choose not to transfer those dollars. Given recent economic times, it's much more beneficial to leave those policies in the insurance company and not turn in a claim because they can earn a much higher rate of return because of the contractual arrangement.

19:20 Representative Kasper: This practice of fining insurance companies because they were not following some type of a method like this is currently happening in North Dakota, and our insurance department has received settlements; is that correct?

Chairman Keiser: You'll find that to be true. It reflects a difference in perspective.

19:57 Representative Louser: On page 3 and in a couple different sections, we're referencing Chapter 47-30.1. Is that the part of Century Code that defines the three years and the November 1 for unclaimed property? If we're following what unclaimed property is defined in the state, could the insurance companies hold these benefits after making a good faith effort for three years before they turn it over to the state?

Chairman Keiser: I do not believe so. Chairman Keiser read from the bill.

20:55 Representative Becker: Assuming the asymmetry is addressed, what is the intent and benefit of turning the monies over to the state after a certain period of time?

Chairman Keiser: From a state perspective, those monies go into the unclaimed property division and begin to earn interest. When a claim is made to unclaimed property, the principle is paid out, but all interest earnings are retained by the state of North Dakota. For those claims where death has occurred and we have the technology to recognize that death and make a match, to at least begin the process of finding the heirs. This does

provide the opportunity to go back and look for them. There were a lot of documented cases, when the large companies started using the death master file, for a lot of little policies where the heirs were found and the policies were honored. The death master file is not perfect. Gave example.

24:48 Representative N. Johnson: In the past, did the insurance companies base premiums on the fact that there were perhaps 15% to be unclaimed? Does that have any impact on premium rates going up for life insurance policies?

Chairman Keiser: I think a little bit of that is true. The result is that they have to reserve, for their exposure, the amounts covered by the policies and the potential for interest. It is factored as a cost, but clearly there has to be some factor for policies that are never claimed. One of the provisions is that under all contracts, there is "limiting age." When a person reaches the limiting age, there are proactive steps taken to look for that individual to confirm they are still alive.

27:07 Representative Kasper: Bottom of page 2, line 29, where we're talking about group life insurance. Presented scenario. How far back does the group life insurance company have to look back in their records to try to match that type of scenario, or for only currently insured group contracts?

Chairman Keiser: We probably are not going to pick up the history of all these things, but really moving forward. You run it against the death master file as it exists today and then run it against all the updates semiannually. Within a six month period, even if they move it should be in their records as payable.

Support:

Senator David O'Connell, Senator from District 6: Commented on thoroughness of presentation by Chairman Keiser.

30:35 Linda Fisher, Unclaimed Property Administrator for the North Dakota Department of Trust Lands: Refer to written testimony, attachment 1. Spoke about state and national databases of unclaimed property owners and corresponding websites. Without this bill, it would be three years before it would be reportable. In the contracts that we have with our auditing firms, it is being turned in under the terms of the settlements not under the three-year terms of the unclaimed property act. Another question is that if this legislation is passed, would it fit better within the uniform unclaimed property act than leaving it in the insurance statutes, and I do not have an answer to that question.

36:31 Representative Kasper: When you receive proceeds from unidentified, unclaimed property, what is the procedure your department uses to try to find the heirs?

36:50 Linda Fisher: There are two websites where people can search for unclaimed property. There is one maintained by my department. There is a nation-wide database. We publish names in official county newspapers once a year. We do some direct mailings. We do some data matching. We also have a bill right now that would allow us to share data with the tax department with the idea that we could maybe find updated addresses

people in order to notify them. We attend trade shows. We do public service announcements. There are a number of methods we utilize in hopes of getting the word out and getting people to our website.

38:54 Representative Amerman: From the other side, if all parties have tried to do the right thing, if someone finds the policy years down the line?

39:40 Linda Fisher: The heir can contact the insurance company, which may direct them to the state of North Dakota. The other option is that the insurance company could honor that claim and then be reimbursed by our agency

Representative Amerman: Is there a limitation of years?

Linda Fischer: The unclaimed property is held in perpetuity. The longer it goes it time, the more difficult it becomes more difficult to find the documentation. The money is invested in the common schools trust fund while under the care of the state.

Opposition:

Neutral:

Hearing closed.

41:56 Representative Louser: I am still unclear about the three year. If we are saying pursuant to that section of code, if that applies in this case. I'd like some research to verify that that would apply.

Chairman Keiser: We will hold this bill and will check it out. I can tell you the most recently passed piece of legislation prevails. So if this says something different than that, specific to life insurance policies, this applies.

42:30 Representative Kasper: Would you request from the Insurance Department the process and procedure they are using now in regard to this bill?

43:13 Rebecca Ternes, Deputy Insurance Commissioner: I believe it started with the state of Florida and was brought to attention of the NAIC because of the leadership position of the commissioner of the state of Florida. We have been involved in countless phone calls with the other lead states, with the companies themselves, with the consultants who are working on the exams. To date, the collection of funds for the state of North Dakota has included John Hancock, AIG, MetLife, Prudential, and Nationwide, for a total of \$954,898 which go into the insurance regulatory trust fund. That is the fund which funds the department, and good portion ends up going to the general fund at the end of every fiscal year. What we are looking for is to change the practice, as this bill does, to make sure that it is consistent use of the death master index. Companies are also required to go back and search the death master file for anything they should have paid out and then pay that out in addition to what they send to the states. Going forward, they have to show us that they've changed their practice.

44:56 Representative Kasper: So you're saying that the \$954,000 are fines levied by the department?

Rebecca Ternes: Legally, they are considered settlements. We do not have a settlement fund, so that's the fund they go into. Any settlements, fines, and fees for producer licensing go into the insurance regulatory trust fund.

Representative Kasper: So these dollars are in addition to what the insurance companies had to pay to the beneficiaries? What did you find to levy that amount of fine on just four insurance companies?

Rebecca Ternes: Yes, they were required to go back and run the matches and then pay out where they could find that. I don't know that we have that kind of detailed information.

46:00 Johnny Palsgraff, attorney for the insurance department and special assistant attorney general: North Dakota was not on the ground floor of these exams. These were market conduct exams. When this problem arose regarding the asymmetrical use, then the NAIC discussed it, and more states were brought in. The companies with which Florida and California had started were among the top insurers. The penalties or amounts of settlements were based on their market share. It would stand to reason, the fewer annuities or life insurance your company sold, the percentage would be the same but the penalty would be in proportion to what the large companies paid.

47:40 Representative Kasper: Theoretically, because these four companies were doing business differently that what you would have liked under the death master file, there could have been only one beneficiary not paid properly and they would have been fined the same amount? Or is this fine or settlement in proportion to the amount of monies that were not paid to North Dakota citizens, or how did you get to that number?

Johnny Palsgraff: Market conduct examiners were doing an examination of their records. The companies chose to settle based on the percentage of business in this area rather than go to a final litigation or final fine.

49:05 Representative Kasper: What they said is that they will pay the fee or settlement even though there could have theoretically been only one or two people in North Dakota who were not treated as they should have been under the bill?

Johnny Palsgraff: I wouldn't support that theory.

Representative Kasper: Do you have that data?

Johnny Palsgraff: Yes. These examiners were in these companies, pulling the records of the number of people who were affected by this and who were not affected by this. They would do sample sizes, like in any type of audit, and then extrapolate out how many people were and were not affected. That information was available to both litigation sides. That's when the amount of the settlement came about. With the first few companies, there was no percentage in place; it was just based on what had happened in the individual company.

After four or five companies had settled and the percentage sort of developed, then examiners and other companies started coming to this area or percentage for settlement.

50:42 Representative Kasper: You'll provide the data. So we have a broad based settlement, say 1% or 2% of premium is your settlement. So those companies paid \$954,000 in settlement fines. That really could have been only a few cases in North Dakota. It looks to me that the people who came to an agreement with the companies did so nationwide or in the states that were involved. We don't really know what the damage is to the citizens North Dakota; we are just getting the fine.

41:27 Johnny Palsgraff: The examiners did pull samplings of the data, and that is what the attorneys based the settlements on. You could be right that there would be no identifying individual North Dakotans who were impacted by this. This has to do with sampling and statistics. North Dakota's share was based on the number of policies sold in North Dakota and the state's market share.

52:25 Chairman Keiser: Would you concur that these were somewhat negotiated settlements, that the companies do not like market conduct exams at any level, that they are threatened by market conduct exams, so they negotiated in part the best deal they could even though they may not have felt they were in the wrong?

52:01 Johnny Palsgraff: These were negotiated settlements. They were negotiated by attorneys on each side. I would agree that generally a company does not want to be examined under a market conduct exam.

53:27 Chairman Keiser: Would these negotiated settlements have been different if the Ohio and Kentucky cases were in play at the time of settlement?

Johnny Palsgraff: I am not familiar with the facts of the Ohio and Kentucky cases. I can tell you that the examinations have not stopped moving forward as a result of those cases.

53:56 Chairman Keiser: I can tell you after the conference call I had on Friday, life insurance companies are taking an entirely different posture now that these cases are at hand. They are taking an entirely different position on any future settlements.

54:18 Johnny Palsgraff: I will definitely look at those cases. From the meeting I had last week, I have not seen anything but the motivation to move forward.

Chairman Keiser: Committee, what do you want to do? They are not going to provide the kind of information you want. What are your wishes on the bill?

Linda Fisher: The exams that the insurance folks were talking about are different than the exams I was talking about on the unclaimed property side of that. On our side, there has been about \$150,000 reported in the names of North Dakota citizens. That would be John Hancock, MetLife, and Prudential. After all the beneficiaries have been looked for and due diligence has been done, we have received about \$150,000. Our stuff is completely separate from the exams on this side.

Representative Louser: I would like an answer for about the three years. My understanding is that property is not deemed unclaimed until it goes through the three year time frame, according to the statute.

Chairman Keiser: This bill will require them to use the death master file. If they cannot find the match within the prescribed period of days, it is unclaimed and will be transferred.

Representative Louser: I just read it as pursuant to that part of code.

Representative Kasper: I think the bill says that once they run it against the death master file, the match is going to be updated every six months.

Chairman Keiser: For the updates, they only have to use the new names. You pay a fee for each name that you match. After you've gone through the full list once, you only have to update with the new names put in into the death master file.

Motion for a do pass made by Representative Kasper and seconded by Representative Sukut.

Roll call vote:

Yes: 15

No: 0

Absent: 0

Carrier: Representative Kasper

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
January 22, 2013
Job 17558

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Unclaimed life insurance benefits

Minutes:

Attachment 1

Committee meeting reconvened.

Chairman Keiser: Yesterday, we took action on this bill to recommend a do pass. We need to reconsider our actions by which we recommended a do pass.

Motion to reconsider our action made by Representative Louser and seconded by Representative N. Johnson.

Voice vote to reconsider: All in favor.

Chairman Keiser: We now have HB 1171 back before us. Compliment to Representative Louser. We met with Jennifer Clark yesterday. She agreed that there was a legitimate point raised by Representative Louser and our legal intern and that it needs to be clarified.

Representative Louser: Distributed attachment 1, proposed amendment 13.0397.02001. We had a potential with the three years when we say pursuant to current code. This would clarify that in this instance, after the ninety days of due diligence, that within thirty days that property is turned over to the state, exclusive of what other unclaimed property would be in the state.

Chairman Keiser: For me, unclaimed property means that in my company I hold a prepayment from a customer, after three years, I am required by law to pay it back to the individual if I can find them. If I cannot find them, I am required to submit it to the unclaimed properties division. That was the confusing part. This bill said we would do that also in this bill. The intent of this bill for life insurance policies was that, once you discover a match in the death master file for a name for which a claim has not been filed, then established a timely process for finding a match and then transferring or escheat the dollars to unclaimed properties. This amendment clarifies that this for life insurance; it's different than the traditional unclaimed properties.

Representative Kreun moves the adoption of the amendment, 13.0397.02001.

Representative Ruby **seconded the motion** to adopt the amendment.

Voice vote in favor of adopting the amendment.

Chairman Keiser: HB 1171 is amended and is now before us.

Motion to do pass as amended made by Representative Ruby and seconded by Representative Kreun.

Roll call vote on do pass as amended:

Yes: 14

No: 0

Absent: 1

Carrier: Representative Kasper

1/23/13
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1171

Page 1, line 2, after "benefits" insert "; and to amend and reenact section 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act"

Page 3, line 20, replace "pursuant to" with "under"

Page 3, line 21, replace "An" with "Within one hundred twenty days following a potential match identified as a result of a death master file or revised death master file match, an"

Page 3, line 21, remove "upon the expiration of the"

Page 3, line 22, remove "statutory time period for escheat"

Page 3, line 28, replace "such" with "providing"

Page 3, line 28, after "notice" insert "under subsection 7"

Page 3, after line 30, insert:

Application.

Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract or policy to the extent the laws do not conflict with this chapter.

Page 4, after line 2, insert:

"SECTION 2. AMENDMENT. Section 47-30.1-07 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-07. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three years. If the policy or annuity contract provides for death benefits and is covered under section 1 of this Act, the insurance company shall comply with section 1 of this Act.
2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.
3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

- a. The company knows that the insured or annuitant has died; or
 - b.
 - (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
4. For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.
 5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.
 6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer, ~~within four months after ninety days following the company learning of the death, the company shall take reasonable steps to pay the proceeds to the beneficiary;~~
 - a. Complete a good-faith effort, which the company shall document, to confirm the death of the insured or annuitant against other available records and information; and
 - b. Determine whether benefits are due in accordance with the applicable insurance policy or annuity contract, and if benefits are due in accordance with the applicable policy or contract the company shall:
 - (1) Use good-faith efforts, which the company shall document, to locate the beneficiary or beneficiaries; and
 - (2) Provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy or contract.

7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

- a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
- b. The address of each beneficiary; and
- c. The relationship of each beneficiary to the insured."

Renumber accordingly

Date: 1-21-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1171**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Kasper Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 15 No 0

Absent _____

Floor Assignment Kasper

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

Date: 1-22-13 pm

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 101**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Louser Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

voice

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Date: 1-22-13 phr

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1171**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0397.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Kreun Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Void

Total Yes _____ No _____
Absent _____

Floor Assignment _____

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

Clarification re: life insurance is different

Date: 1-22-13
10/9/13

Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1171**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number 13.0397.02001

Action Taken: Do Pass Do Not Pass Amended ^{AS} Adopt Amendment
 Rerefer to Appropriations Reconsider Consent Calendar

Motion Made By Ruby Seconded By Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog					
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Jasper

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

REPORT OF STANDING COMMITTEE

HB 1171: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1171 was placed on the Sixth order on the calendar.

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"SECTION 2. AMENDMENT. Section 47-30.1-07 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-07. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three years. If the policy or annuity contract provides for death benefits and is covered under section 1 of this Act, the insurance company shall comply with section 1 of this Act.
2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.
3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:
 - a. The company knows that the insured or annuitant has died; or

- b. (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
4. For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.
 5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.
 6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer, within four months after ninety days following the company learning of the death, the company shall take reasonable steps to pay the proceeds to the beneficiary:
 - a. Complete a good-faith effort, which the company shall document, to confirm the death of the insured or annuitant against other available records and information; and
 - b. Determine whether benefits are due in accordance with the applicable insurance policy or annuity contract, and if benefits are due in accordance with the applicable policy or contract the company shall:
 - (1) Use good-faith efforts, which the company shall document, to locate the beneficiary or beneficiaries; and
 - (2) Provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy or contract.
 7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

- a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
- b. The address of each beneficiary; and
- c. The relationship of each beneficiary to the insured."

Renumber accordingly

2013 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1171

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1171
March 20, 2013
Job Number 20236

Conference Committee

Committee Clerk Signature

Eva Leibel

Explanation or reason for introduction of bill/resolution:

Relating to the state's unclaimed property act

Minutes:

Testimony and Amendments Attached

Chairman Klein: Opened the hearing.

Representative Keiser: Introduced the bill. He handed out an amendment and also marked up bill with the amendment changes, **Attachments (1&2)**. He gave background on this issue. Two to three years ago when states, with the exception of North Dakota, were in very difficult fiscal times an entrepreneurial group of individuals developed a company and an approach. They did not come to the insurance commissioners in the states they went to the treasurers in the various states. They said they had the potential to bring to the state, into the unclaimed property, significant dollars. In unclaimed property when we put money into unclaimed property the earnings from the unclaimed property dollars go to us. What they recognized was that there existed in the life insurance area specifically many policies that were being held by life insurance companies. The individual for whom that policy provided coverage had died but it wasn't recognized that they had died and as a result the monies were sitting in the reserves of the insurance companies. Traditionally life insurance companies have followed the practice and it has been accepted by all of the regulators that a policy becomes due and payable upon presentation of some official evidence of death. They have to verify that the person you are requesting monies for was the insured and you are a proper beneficiary. Life insurance companies have done an outstanding job and are extremely motivated to make payments on legitimate claims. According to the ACLI about 93% of all policies are paid under traditional claims. That only leaves seven percent of the policies that aren't being claimed. The company said that the seven percent should be transferred from the insurance company to the unclaimed property because those are the tough ones that we can't find. Significantly more money is paid every year in the United States through life insurance claims than is paid in social security for that year. The social security department developed what is called the death master file. If you die you are going to be listed on the death master file. The proprietary company that came along said, if you give us the names of the policies within the companies, we can run a match against the death master file and we will identify individuals that have died. They would then try to go out and find the individuals. If they can't find them, those dollars would be transferred to the

unclaimed property. This is how unclaimed property came into this thing. He continued to go over the amendment. (:34-37:11)

Levi Andrist, American Council of Life Insurers: Written Testimony and Amendment **Attached (3&4)**. He had a couple of things that they wanted the committee to consider that are different than what Representative Keiser recommended. (37:50-47:40)

Linda Fisher, Unclaimed Property Administrator, North Dakota Department of Trust Lands: Written Testimony and Supplement to Testimony, **Attached (5&6)**. (48-57:32)

Opposition

John R. Camillo, Senior Vice President, Secretary and Group Counsel of the Kemper Home Service Companies: Written Testimony and Amendment **Attached (7&8)**. (1:01-1:18)

Senator Laffen: Asked John Camillo why Representative Keiser wouldn't have made it prospective.

John Camillo: Said he noticed that Representative Keiser did not mention any of the constitutional issues or any of the litigations. He isn't sure if he isn't focusing on the legal aspect of the bill as he has tried to do during his testimony.

Discussion and questions (1:20-1:28)

Neutral

Rebecca Ternes, Deputy Insurance Commissioner for the North Dakota Insurance Department: Said it might be useful to talk about their role in these multistate examinations that have been going on. What we are hearing about is a lot of lumping annuities with life insurance, lumping companies that used the death master file to do one thing and not the other. There regulatory concern was those companies that were using the DMF to stop payments but not to then pay out payments. With regards to doing this prospectively only, what they wouldn't want to see is that it would not make the companies that were not using the DMF's go back and make things right. They didn't bring this legislation forward because they are taking this on in another way. They are using market conduct exams, which the regulator has a right to do, to go back and say you didn't do this right, you didn't treat these policy holders right so fix it. They want policy holders to get the benefits that they paid for and also want the companies to be able to stop payment when it is appropriate. (1:29:13-1:31:25)

Chairman Klein: Asked if retroactive would not be right.

Rebecca Ternes: Said she isn't sure retroactive blanket would be right. To lump everything together isn't the right way to do it. They would want to sit down and go through this language very carefully and all the amendments which they just received yesterday.

Chairman Klein: Asked if this bill doesn't pass does it change anything on how you do business or if this passes does it help you.

Rebecca Ternes: Said that it doesn't change what they are doing on the market conduct side.

Discussion and questions (1:33-1:35)

Chairman Klein: Said he would have people work together and craft something that would be in agreement with everyone involved. He closed the hearing.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1171
March 26, 2013
Job Number 20502

Conference Committee

Committee Clerk Signature

Sam Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the state's unclaimed property act

Minutes:

Discussion and Amendment

Chairman Klein: Called the meeting to order.

Levi Andrist, American Council of Life Insurers: The heart of the bill is it imposes obligations on life insurers to use the death master file from the social security administration to search for dead policy holders. It imposes obligations on a life insurance company to do these searches and to find beneficiaries, to locate them to determine if benefits are due and get them the appropriate forms. What is in the amendment is almost everything Representative Keiser had in his amendment minus one primary concept. They think the bill should only relate to searches of the death master file. He went over the amendment. **Amendment Attached (1).** (:20-6:00)

Discussion of the amendment continued (6:01-11:22)

Chairman Klein: Said he is going to have someone come from the insurance department. He closed the meeting.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1171
March 27, 2013
Job Number 20528

Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the state's unclaimed property act

Minutes:

Discussion, Amendment and Vote

Chairman Klein: Opened the meeting. Said he visited with the insurance regulators and they made some changes on the amendments handed out by Levi Andrist yesterday. He addressed the changes made to that amendment. **Klein Amendment Attached (1).**

Rebecca Ternes, Deputy Insurance Commissioner for the North Dakota Insurance Department: She commented on the insurer having to make a good faith effort to document, to confirm the death in other ways, to determine if the benefits are do and give any forms that the beneficiaries need to make the claim.

Chairman Klein: Asked if they were comfortable with the language in the amendment, 13.0397.04004.

Rebecca Ternes: Said they were fine. This speeds up the process for life insurers. It clarifies what they have to do to find people that are deceased and find their beneficiaries and pay out the policies.

Senator Unruh: Moved to adopt the amendment, 13.0397.04004.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0 Motion Carried

Senator Sorvaag: Moved a do pass as amended on Engrossed HB 1171.

Senator Sinner: Seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent - 0 Motion Carried

Floor Assignment: Senator Sorvaag

March 26, 2013

JK
3/27/13
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "four months"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert: "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert: "Every insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, remove lines 21 through 30

Page 4, replace lines 1 and 2 with:

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner.

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

2 of 2

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 16, remove "If the policy or annuity contract provides for death benefits and is covered under"

Page 4, remove line 17

Page 5, line 21, remove the underscored comma

Page 5, line 22, remove the overstrike over "~~four months after~~"

Page 5, line 22, remove "ninety days following the company learning of"

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1171**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0397.04004

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Unruh Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1171**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0397.04004

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Sorvaag Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sorvaag

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

REPORT OF STANDING COMMITTEE

HB 1171, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1171 was placed on the Sixth order on the calendar.

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

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Page 5, line 22, remove "ninety days following the company learning of"

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1171

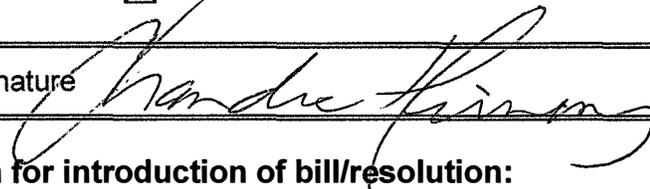
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
April 12, 2013, morning
Job 21134

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to unclaimed life insurance benefits; and to amend and reenact section 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

Minutes:

Handouts, attachments 1 and 2

Committee meeting opened. Roll call taken.

Chairman Keiser: I'll ask the Senate to explain the amendments, which I brought to their committee. There are two additional changes which are of significance.

Senator Klein: These are the amendments you brought forth but with a couple tweaks. Senator Sorvaag will explain them.

Senator Sorvaag: Working off the marked-up version of the first engrossment, explained the Senate amendments.

4:00 **Chairman Keiser:** Almost everything you see in green as an amendment I brought in, supported by the Insurance Department generally speaking. It was coming from a working group from ACLI, American Council of Life Insurance Companies, trying to address issues they were experiencing.

4:32 **Chairman Keiser:** Explained addition regarding rulemaking on page 4 of the bill.

5:35 **Chairman Keiser:** Distributed attachment 1, e-mail from Gerry Kraus. You have heard it is difficult for small companies to do this type of thing. E-mail from Kraus indicates that his small company has used the Death Master File when it was to their convenience. There is not a life insurance company of any size that cannot access the Death Master File and do a match.

7:35 **Chairman Keiser:** Distributed attachment 2, lawsuit in Kentucky. If you've had a chance to read through this, the judge is pretty clear in his ruling that we have the authority

to retrospectively apply this. This is a regulatory issue, not a contract issue. Kemper has filed a motion for a reversal. Based on discussions I've had, the major concern of some life insurance companies is what they were doing with that reserve.

10:00 **Chairman Keiser:** There are two areas that I cannot support. One is the three year escheating. That does not serve the consumers of the state. It's important to recognize that when a life insurance company is holding a policy and a claim is filed, the person holding the claim does not have to request a payout immediately. They can leave it with the insurance company and then put in a claim at any time. If a death has occurred but not been recognized, we are asking them to do due diligence. I don't have a problem going two one hundred twenty days from ninety days. There are proprietary companies with which they can contract if they do not wish to do this that use many factors in addition to the Death Master File to identify the location of the heirs. So it is not a process that magically happens at two years that would not happen at six weeks. If we don't put a reasonable time period in there and extend everything out to three years, companies may wait to begin work on it until close to the end because they are benefitting from holding it in reserve. Do you believe they will show the same level of effort over a three year period in trying to find someone? If not, then why don't we transfer it to Unclaimed Properties?

13:04 **Representative M. Nelson:** I have only one major problem with the whole thing, and that is with page 4, the rulemaking portion. As I read that, we are making the whole bill subject to administrative rules. If we want the Commissioner to be able to extend or something, then the bill should say that. Otherwise, literally we're giving the Commissioner authority to overrule the entire statute with his rulemaking process.

13:40 **Chairman Keiser:** I have such a positive perception of our insurance department relative to consumer protection. The rulemaking authority would be for exceptions. With rulemaking, they have to come forward to the legislative body and present the rules. We can always it if we think they're abusing it. This was added for the argument that if there is a little company that still uses paper instead of electronic records, or if there's another hitch in the system, this gives the insurance department to make an exception in the individual case.

14:40 **Senator Sorvaag:** Page 2, line 9, we went to November 1. You were okay with that?

Chairman Keiser: Agrees.

14:51 **Senator Sorvaag:** Page 2, line 17, the change in the number of days. Would you like to see it going back?

Chairman Keiser: I could live with that. I think it's an unreasonable extension, but needing to accommodate maybe something you heard.... I wanted them to jump in and do the best they could to locate someone; I wanted to put the pressure on them to do that. Going to November 1, 2014, extends it. Will they jump in with the same effort at the beginning? That's the question.

15:42 **Senator Sorvaag:** I think the four months is only one more month than what had been written. I'm not sure why it was extended, but it didn't seem like a big deal to go one more month. Representative M. Nelson brought up the rulemaking. Otherwise, the main contention we're dealing with is the top of page 4. I cannot find the three years in here right now, but it's in the code now.

16:18 **Chairman Keiser:** The current escheating laws, which apply to life insurance, are three years after the recognition. The downside is that you escheat it to the state. The state will earn interest on that investment, but the heir will not receive the interest. This takes the incentive of holding it for a long time and escheating it anyway.

Senator Sorvaag: But they still have to make a search semi-annually during that three year period.

Chairman Keiser: That is correct, but then they have to make their effort to find them. There is sort of disincentive to find them. To leave that money in is a real incentive.

17:21 **Senator Sinner:** I'd like to agree with you on the time period. I think these companies have an advantage to contact a beneficiary to try to make a deal. We all know that they try to make a deal to provide terms to keep the money in the company and provide benefits over a long term. Without the pressure to get that done, they are going to wait until the end. I agree with you on the three year thing.

17:58 **Senator Klein:** I think what happened is we took your amendments and worked with representatives from the ACLI. They crafted some amendments. I sat down with the insurance department. We uncrafted some and picked some, and this is where we wound up. We are open to discussion. We're looking whether or not we need compromise. If we're providing major roadblocks for the industry, I don't know. You certainly make a great case. We're willing to work with you to make this better. Also, we're open to reach out to the industry regarding the time period.

Chairman Keiser: I don't have a lot of objection to the change on page 2 moving from ninety days to before November 1. That gives them more time to get set. The second one on line 17, ninety days to four months, that's thirty more days and is not a deal breaker. There is one insurance company that strongly opposes the portion on page 3, lines 10-17. This is an area that makes sense. Gave example. Despite their objection, I do support that. I do support the rulemaking. We can vote on individual parts of this is the committee wishes. Did you delete lines 9 and 10 on page 5? It appears to have been in the original bill but is stuck on the marked-up version. It's redundant?

Senator Klein: I believe it was for cleanup.

Chairman Keiser: If we could move to accede to the Senate's amendments but further amend on page 4, subsections 7 and 8. The only question left would be regarding the one hundred and twenty days. They felt that was too short; they're proposal was to go to three years, which is what was accomplished by deleting this. Their real position is one year. My position, if not one hundred and twenty days, is six months. If you haven't found someone in six months, send the property. If I were a small to medium company, I might escheat

immediately. There is nothing that precludes that. Why spend the money looking? We are out of time. If we could think about that, we will reconvene.

Senator Klein: We are certainly here to listen to that. It was trying to work with the industry. If you want to try to work with the industry and get this as close as we think we can get it, we're open to your interpretations. We appreciate that.

Chairman Keiser: We will reschedule and will be back soon.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
April 16, 2013
Job 21164

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to unclaimed life insurance benefits; and to amend and reenact section 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

Minutes:

Handouts, attachments 1-4

Committee called to order.

Chairman Keiser: Distributed attachment 1, e-mail from Levi Andrist expressing the concerns of ACLI. The concern deals primarily with the period for escheating. Distributed attachment 2, proposed amendment 13.0397.04005. Distributed attachment 3, a marked-up version of the bill featuring the proposed attachment 13.0397.04005. The amendments are basically the same, with the critical points on page 4 of the marked-up bill, Subsection 8. These amendments move it from one hundred twenty days to six months following a potential match. That would be the period of review up which escheating would occur. Jennifer Clark shared that she had a discussion with the Unclaimed Properties Division. Currently, the state's Unclaimed Properties Division is at three years for everything outside of this. The director of the Unclaimed Properties Division told Jennifer that it would be nice to move everything on the escheating side to the one year. Three years probably is too long. I don't disagree with that, other than we don't have the opportunity at this point to have a public hearing on that. I would be reticent at this point to move the entire code and the escheating side to one year without the input from retail, hospitality, and some of the other areas. This bill deals with a specific issue.

4:02 **Linda Fisher, Unclaimed Property Administrator:** I did speak with Jennifer Clark. The one year I suggested was just for this property type, not for the entire section.

4:21 **Chairman Keiser:** I misunderstood. Moving this to one year is the recommendation from Unclaimed Properties Division. Another component in the amendment is to remove the overstrike on page 5, Subsection 1 of Section 2. The Senate has placed an overstrike on what is now underlined on the marked-up version (attachment 3). That is a critical piece of language to put back in. There are some products sold by the life insurance industry that would not be appropriate to this section of law.

5:41 **Senator Sorvaag:** I have additional amendments. Mainly my amendment would be what you did in Subsection 8, but it changed the one hundred twenty days to one year instead of six months. I'm not sure if the other areas in your amendment were brought in by mine. Distributed proposed amendment 13.0397.04006, attachment 4.

Chairman Keiser: I do think that is the primary sticking point.

Senator Sorvaag: This removed the underscore on page 5 as well. I think the only difference is the one year instead of six months.

Representative M. Nelson: The other difference is page 2, line 17, insertion of word *potential* is on attachments 3, not on attachment 4 from Senator Sorvaag.

9:00 **Chairman Keiser:** *Potential* is appropriate there. Related example. I can certainly live with one year if that's the only thing holding this up. I don't pass legislation to meet ACLI's needs. We pass legislation for the citizens of North Dakota

10:42 **Representative Sukut:** I think on page 2, line 17, there is also another difference. In your amendment, Chairman Keiser, it says six months. In Senator Sorvaag's amendment, it says four months.

Chairman Keiser: So that actually shortens the time period.

Senator Sorvaag: I didn't know you had your amendment, Chairman Keiser, so she worked off the Senate Engrossed one. We definitely have to take these and get them on the same page. There are some discrepancies. We need to go through this to make sure there is nothing else.

Chairman Keiser: That makes sense. We want this to be right. With that, Senator Sorvaag, if you want to ask Jennifer Clark to run out a marked-up copy for us. We can have the marked-up copy given to Senator Sorvaag but also have about five copies made available at the desk for parties to pick up in advance of our next meeting.

12:20 **Senator Klein:** I see another concern of ACLI, regarding page 5, line 9. They're suggesting we leave out the portion Chairman Keiser's amendment put back in. Isn't that just clarifying? I'm wondering why they wouldn't want to leave that in.

Chairman Keiser: We could ask for their comment.

Senator Klein: It seems to me it does not create any more....

Chairman Keiser: It actually is protection for them. Otherwise, every one of their products could fall under this section. Jennifer Clark was adamant that if we leave this in, every one of their products falls under this law. She didn't think that would necessarily be beneficial to the life insurance industry.

Senator Klein: Leaving it in would be good....

Chairman Keiser: It would be good for the life insurance industry according to Jennifer Clark. But they don't necessarily agree. It doesn't hurt to leave it in.

Senator Sinner: Are we going to change the provision on page 2 to six months as you had it?

Chairman Keiser: That date is different than the other date. I believe that stays at six months.

Senator Sorvaag: My intent was to have Jennifer Clark change your six months to year and to leave the rest of your amendment. We'll go to 13.0397.04005 and have her change six months to one year and stay with the rest of that amendment.

Meeting adjourned; will be rescheduled.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
April 17, 2013
Job 21193

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to unclaimed life insurance benefits; and to amend and reenact section 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

Minutes:

Attachments 1 and 2

Meeting called to order. Roll taken.

Senator Sorvaag: Distributed attachment 1, proposed amendment 13.0397.04008. Distributed attachment 2, marked-up version of proposed amendment 13.0397.04008. Walked through proposed amendment. Once the twelve months is up, they have thirty days to move the funds to the state.

3:07 **Chairman Keiser:** If we look at page 2, subsection 2, and we look at subsection 7 and we make those consistent with the twelve months, what are we doing with page 6, subsection 6? It says the same thing but slightly differently, and it leaves a window open. What is that doing?

Linda Fisher, Unclaimed Properties Division: (faint audio) The thirty days makes it clumsy under the statutes. In North Dakota, the report and money come at the same time. We are a report/remit state. There is a twelve month time already. I'm not sure why the thirty days was added outside of the twelve month period. Referring to page 4.

4:53 **Senator Sorvaag:** The term *immediately* is very quick. At the end of the search time of twelve months, they have thirty days to send the funds and send the report. They can do it in a day if they want. Until Unclaimed Property got possession, it could be thirteen months.

Rebecca Ternes, Insurance Department: How do you sync that with twelve months?

Senator Sorvaag: That is the problem, and I'd have to go back to Jennifer Clark to find out.

Chairman Keiser: Sub-item number 6, I am not sure what we need it for. The way it is written now, it is redundant with previous sections.

Senator Sorvaag: I'd have to ask Jennifer Clark. I know it was something she was concerned about and wanted.

6:46 Jacob Geiermann, legal intern with the House IBL committee: Looking at the marked-up version 04008, page 3, lines 27-30. This section is in Section 1 of the bill and is regarding the Death Master File. There is a question about the inconsistency between the last section of the bill and this portion. If you look at Subsection 7 in this marked-up version, it essentially says that the property will escheat to the state as unclaimed property under chapter 47-30.1. The escheat doesn't happen under this per se, but it referenced the unclaimed property statute. I'd now point you to page 6, lines 15 to the end of the bill. This would be the operative section for the twelve month escheat. In the new law that is being written, it references this section of the code which typically would have to be consistent with one another.

8:08 Chairman Keiser: Look at page 2, subsection 2.

Jacob Geiermann: Are you referencing the slight differences in the section?

Chairman Keiser: It's basically saying the same thing with a slight difference. This is what the insurer must do on subsection 2, page 2. We are saying it has to be escheated in twelve months, regardless of what the other escheat laws in the state are. What then does subsection 6 on page 6 add?

Jacob Geiermann: I believe that that section would be the statute that would actually escheat the property to the state.

Chairman Keiser: But it doesn't say that.

Jacob Geiermann: That is in 47-30.1.

Chairman Keiser: If you read what six says, it has nothing to do with that.

Jacob Geiermann: I will defer to Jennifer Clark. I believe the intent of referencing 47 was to have that section be the operative escheat provision.

Chairman Keiser: We need to ask Jennifer Clark to check that.

Senator Sorvaag: I think you're right. My understanding is that it was to put consistency.

Chairman Keiser: Clearly section 2 deals with funds owing under life insurance policies. We need to say what happens to funds owing. The current subsection 6 gives another indication that they have to do this good search, but it doesn't do anything more than that. It doesn't say they have to escheat the properties.

Jacob Geiermann: I would also say that because the earlier provision only says it escheats pursuant to this section, that section 1 on its own would not have that operation. I think the language would need to be clarified to ensure it's a shorter escheat period than the three year period.

Chairman Keiser: It seems to me there almost has to be a third part that says that upon not finding, the funds are transferred. But maybe that is covered in previous sections. If we read what subsection 6 says, not what we want it to say, it says nothing new from the other sections. If this is the transfer of the dollars, we need the dollars transferred.

Linda Fisher: (audio faint) If you take out section 6, then all you have left in the unclaimed property code is the three year.

Chairman Keiser: I think Jennifer Clark may have missed a part C which was on my original amendment.

Jacob Geiermann: Chairman Keiser's .04005 proposed amendment had it. It would have had language that said that the company shall report and deliver the unclaimed property to the administrator as abandoned property. It does not use the word *escheat*, but I think the language in Chairman Keiser's proposed amendment would have had that effect.

Chairman Keiser: Is that someplace else in the bill?

Senator Sorvaag: That's what we talked about at the end that I had taken out.

(audio faint)

Chairman Keiser: I think we need to make sure this is right so that we get the outcome we desire. You guys asked for that to be removed, or not? Levi, will you come up?

13:52 **Levi Andrist, representing the American Council of Life Insurers:** Our initial proposal on the Senate side was to leave the escheat abandoned unclaimed property statute out of this, to keep to the bill as Chairman Keiser introduced it without the escheating language. The escheating language right now for policies subject to the DMF searches is section 9 on page 4. Read from Senator Sorvaag's amendment, attachment 2. Linda has said that *within thirty days* makes it different than all other types of property that is submitted to the state's unclaimed property office. We proposed removing *immediately*, and then not adding *within thirty days* and then leaving it within the existing unclaimed property code. If you remove the thirty days and leave out the word *immediately*, there is already a twelve month notification requirement under section 8 of the bill. My incorporating that into 47-30.1, by operation of law, it would be a one year escheat. I don't think the thirty days adds benefit to the industry or to consumers; it complicates the reporting period for the Unclaimed Property Division. Elaborated.

Senator Sorvaag: But the thirty days was put in from our discussion.

Levi Andrist: I believe Chairman Keiser suggested thirty days, and we said that is fine with us. It doesn't need to hold up the bill. I'm trying to identify the concern Linda has.

Linda Fisher: It makes it thirteen months whereas everything else is twelve.

Levi Andrist: If you take out that thirty days, the implicit understanding by operation of law is that it remains at twelve months but that your reporting requirements are still under the existing unclaimed property code. NCOIL developed this bill through section 7. It's sections 8 and 9 that were not drafted through NCOIL to properly communicate with the existing unclaimed property code.

Chairman Keiser: But we didn't have a drafting note that said we have to make it specific to each state's operation. We do have to address that. Don't you agree?

Levi Andrist: Absolutely. ACLI's position in the Senate side was that the NCOIL model was acceptable. Since then, ACLI has come to the position that that is important to this committee, and we can work with that, within the one year notification and escheating timeframe. I think the .04008 draft does that, except for the fact that the administrative timelines do not mesh.

Chairman Keiser: Explain subsection 6 on page 6. What does it do that we haven't covered?

Levi Andrist: The initial part of the bill governs policies subject to Death Master File searches. Section 6 on page 6 is not specific to policies subject to Death Master File searches.

Chairman Keiser: It has everything to do with funds owing under life insurance policies. We want to transfer the dollars. What does Subsection 6 do without the language which you asked to have removed which requires the transfer of the dollars?

Levi Andrist: I don't think Section 6 operates as a mechanism for transferring the dollars.

Chairman Keiser: Not in the way it is here. You asked for that paragraph, the third part, to be removed.

Levi Andrist: Of Section C, which was your amendment yesterday. That's because we feel that language was duplicative of what already exists in subsections 8 and 9 of section 1 of the bill.

Chairman Keiser: You just admitted that those first sections deal with the Death Master File. Section 2 deals with the transfer of the property. Are you telling me Section 2 does not deal with the transfer?

Levi Andrist: It does, but Section 1 does as well.

Chairman Keiser: I don't think so.

Levi Andrist: Read from subsection 9. So there are two transfer provisions, one in each of the sections of the bill.

Chairman Keiser: We'll take it back to Jennifer Clark and ask why we need Section 2.

Levi Andrist: We suggested in the Senate side that the existing unclaimed property laws not be amended or modified.

Chairman Keiser: But we are modifying them, so we have to make some other changes.

Levi Andrist: I think that is the decision for this committee.

Chairman Keiser: The committee has agreed to the one year modification.

Levi Andrist: That's the largest concern of ACLI.

Senator Sorvaag: We are right on the dates; we need to clarify the language.

Chairman Keiser: We'll adjourn and then get Legislative Council to respond.

Senator Sinner: Are we going to remove the thirty days in that other section?

Chairman Keiser: We certainly can. I thought I was doing the companies a service by putting *within thirty days*.

Senator Sinner: I think we should.

Chairman Keiser: The term that was there was *immediately*. Now you're going to be transferring maybe thirty times a month as you recognize a match and you cannot find them and you hit the twelve month period. As of that date, you're going to transfer. I thought putting thirty days in gave them a cushion to sort of batch the transfer, but if not, I'm happy to take it out.

Senator Sinner: I understand that, but there are only twenty working days a month.

Linda Fisher: But you're only running the report twice a year.

Chairman Keiser: It would be just at those points; it won't be at the twelve months. Sometimes it would be eighteen months before escheating. Elaborated.

Linda Fisher: They have up to twelve months after each of those runs.

Chairman Keiser: Senator Sorvaag, maybe you and I could walk up together to Jennifer Clark.

Meeting adjourned. Will reschedule.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1171
April 18, 2013
Job 21233

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to unclaimed life insurance benefits; and to amend and reenact section 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

Minutes:

Proposed amendment and marked-up version,
attachments 1 and 2

Meeting called to order. Roll call taken.

Senator Sorvaag: Distributed proposed attachments 1 and 2. Attachment 1 is proposed amendment 13.0397.04009. Attachment 2 is marked-up version 13.0397.04009.

Chairman Keiser: I have asked Jennifer Clark from Legislative Council to walk us through the bill and the newest amendments.

1:01 **Jennifer Clark, Legislative Council:** Referring to 13.0397.04009 marked-up version, attachment 2, walked through the bill and the newest amendments.

10:54 **Chairman Keiser:** As I understand this, the first part deals with the application of the Death Master File, section 1. We have the twelve month period where the company will look for them. Section 2 is an attempt to look at those other policies where the escheatment law would have remained at three years when they reached the potential death. If they don't find the beneficiaries in the one year period, they escheat the dollars at the end of that period to be consistent with Section 1.

Jennifer Clark: Another thing it catches is that these insurance companies may have a reason to know a policy holder has passed away. Elaborated.

Chairman Keiser: It doesn't require the application for a claim. If they have a reason to know, it would go into the one year escheatment process. Any questions for Jennifer?

Chairman Keiser: What is the correct motion?

Jennifer Clark: There is conflict between these changes and the ones the second chamber did, so we'd recede from the Senate amendments and amend. Explanation.

13:25 **Senator Sorvaag:** Made **motion** that Senate recede from its amendments and that we further amend with amendment 13.0397.04009.

Motion **seconded** by Senator Klein.

Roll call vote. Yes = 6, No = 0. Motion carries.

130397.04009
83

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "twelve months"

Page 2, line 17, after the first "the" insert "potential"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;

c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and

d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 20, replace "under chapter 47-30.1" with "as provided under this chapter"

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "twelve months"

Page 3, line 22, replace "notify" with ":

a. Notify"

Page 3, line 23, remove the underscored colon

2/3

Page 3, line 24, replace "a. A" with "a"

Page 3, line 25, after "submitted" insert "and completed"

Page 3, line 25, remove the underscored semicolon

Page 3, line 26, replace "b. The" with "that the"

Page 3, line 28, replace the underscored period with "and unable to complete the necessary payment; and"

Page 3, line 29, replace "8." with "b."

Page 3, line 29, replace "Upon providing notice under subsection 7, an insurer immediately shall submit the" with "Submit any"

Page 4, line 1, remove "as provided"

Page 4, after line 2, insert:

"9. Except as otherwise provided under this chapter, chapter 47-30.1 applies to the escheatment of unclaimed life insurance benefits or unclaimed retained asset accounts.

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner.

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

Page 4, line 7, after the second underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 11, overstrike "Funds" and insert immediately thereafter "Except as otherwise provided under this section, funds"

Page 4, line 12, overstrike "more than"

Page 4, line 13, overstrike "three years" and insert immediately thereafter "one year"

Page 4, line 14, overstrike ", but property described in"

Page 4, overstrike line 15

Page 4, line 16, overstrike "years"

Page 4, line 16, after "is" insert "a policy"

Page 4, line 25, after the first "the" insert "insurance"

5/3

Page 4, line 26, overstrike "that" and insert immediately thereafter "of the potential death of"

Page 4, line 26, overstrike "has died" and insert immediately thereafter ", in which case the company shall comply with subsection 6"

Page 5, line 20, overstrike "Notwithstanding any other provision of law, if" and insert immediately thereafter "If"

Page 5, line 20, after the second "the" insert "death or potential"

Page 5, line 21, overstrike "and the beneficiary has not communicated with the insurer"

Page 5, line 22, after "~~four~~" insert "twelve"

Page 5, line 22, remove the overstrike over "~~months~~"

Page 5, line 22, remove "ninety days"

Page 5, line 22, after the second "the" insert "death or potential"

Page 5, remove line 26

Page 5, line 27, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer;

c."

Page 6, line 3, replace the underscored period with "; and

d. Report and deliver the unclaimed property to the administrator as abandoned property if the benefits are due in accordance with the applicable insurance policy or annuity contract and the beneficiary has not submitted and completed a claim with the insurer."

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: **House Industry, Business and Labor**

Bill/Resolution No. 1171 as (re) engrossed

Date: 4-18-2013

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1225 - 1226

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) 1171 was placed on the Seventh order of business on the calendar

Motion Made by: Sorvaag Seconded by: Klein

Representatives	412	410	417	418	Yes	No		Senators	412	410	417	418	Yes	No
<u>Keiser</u>	✓	✓	✓	✓	✓			<u>Sorvaag</u>	✓	✓	✓	✓	✓	
<u>Sinkoff</u>	✓	✓	✓	✓	✓			<u>Klein</u>	✓	✓	✓	✓	✓	
<u>M. Nelson</u>	✓	✓	✓	✓	✓			<u>Finner</u>	✓	✓	✓	✓	✓	

Vote Count Yes: 6 No: 0 Absent: _____

House Carrier Keiser Senate Carrier Sorvaag

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment
13. 0397. 04009

REPORT OF CONFERENCE COMMITTEE

HB 1171, as engrossed: Your conference committee (Sens. Sorvaag, Klein, Sinner and Reps. Keiser, Sukut, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1225-1226, adopt amendments as follows, and place HB 1171 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "twelve months"

Page 2, line 17, after the first "the" insert "potential"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

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Page 3, line 29, replace "8." with "b."

Page 3, line 29, replace "Upon providing notice under subsection 7, an insurer immediately shall submit the" with "Submit any"

Page 4, line 1, remove "as provided"

Page 4, after line 2, insert:

"9. Except as otherwise provided under this chapter, chapter 47-30.1 applies to the escheatment of unclaimed life insurance benefits or unclaimed retained asset accounts.

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "practices" insert "- Liability limitation"

Page 4, line 7, after the second underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 11, overstrike "Funds" and insert immediately thereafter "Except as otherwise provided under this section, funds"

Page 4, line 12, overstrike "more than"

Page 4, line 13, overstrike "three years" and insert immediately thereafter "one year"

Page 4, line 14, overstrike ", but property described in"

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Page 4, line 16, after "is" insert "a policy"

Page 4, line 25, after the first "the" insert "insurance"

Page 4, line 26, overstrike "that" and insert immediately thereafter "of the potential death of"

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Page 5, line 20, overstrike "Notwithstanding any other provision of law, if" and insert immediately thereafter "If"

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Page 5, line 27, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer;

c."

Page 6, line 3, replace the underscored period with "; and

d. Report and deliver the unclaimed property to the administrator as abandoned property if the benefits are due in accordance with the applicable insurance policy or annuity contract and the beneficiary has not submitted and completed a claim with the insurer."

Renumber accordingly

Engrossed HB 1171 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1171

TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota Department of Trust Lands

① 1-21-2013
HB 1171

IN SUPPORT OF HOUSE BILL NO. 1171

Industry, Business, and Labor Committee
January 21, 2013

Mr. Chairman and members of the Committee, I am Linda Fisher, Unclaimed Property Administrator for the ND Department of Trust Lands. I am here today to testify in support of House Bill 1171 as it relates to owners' rights and the North Dakota Uniform Unclaimed Property Act (the Act).

As you may know, the Act, found in NDCC 47-30.1, and adopted in some form in all 50 states and four Canadian provinces, has been in effect and administered by the Board of University and School Lands in North Dakota since 1975. In the interest of consumer protection, the Act requires that after a certain time period has elapsed, business owners report unclaimed financial assets to respective State Unclaimed Property Administrators. In turn, the States undertake initiatives aimed at returning the property to the rightful owner or their heirs.

While the Act exempts certain property types (such as gift certificates and cooperative patronage dividends) from reporting, life insurance death benefits have long been a reportable property under explicit language found in NDCC 47-30.1-07 (*Funds owing under life insurance policies*). Since 2010, the North Dakota Board of University and School Lands' Unclaimed Property Division, has been under contract with multiple firms to conduct multi-state compliance reviews specifically in the area of unpaid and unreported death benefits. Generally speaking, those review procedures are being carried out in the manner described within this bill.

It should be noted that life insurance companies do have reporting histories in North Dakota, but what has historically been received may have been limited to uncashed checks on policies where claims were initiated by knowing beneficiaries. However, it goes without saying that many beneficiaries are in fact "unknowing".

Life insurance companies already utilize master death indexes to identify deceased policy holders for purposes of discontinuing distributions to decedents. This proposed legislation essentially requires that the same information be gathered on behalf of beneficiaries as well. The language requiring that reasonable attempts be made to identify and notify policy beneficiaries provides a practical approach to enabling those beneficiaries to receive the funds to which they are entitled under the terms of the policy.

Further, the reporting of residual proceeds to the States' unclaimed property program provides even more opportunities for missing and/or unlocatable beneficiaries to be made aware that the asset exists and is waiting to be claimed.

As such, we respectfully request a "do pass" recommendation of HB 1171.

47-30.1-07. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three years.
2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.
3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:
 - a. The company knows that the insured or annuitant has died; or
 - b. (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
4. For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.
5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.
6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.
7. Commencing two years after July 1, 1985, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information: a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class; b. The address of each beneficiary; and c. The relationship of each beneficiary to the insured.



②
1-21-2013
HB 1171

Testimony of the American Council of Life Insurers
Before the House Standing Committee on Industry, Business and Labor
Monday, January 21, 2013

House Bill 1171 – An Act Relating to Unclaimed Life Insurance Benefits

Chairman Keiser, Vice Chairman Sukut and members of the Committee, thank you for your interest in the our position on House Bill 1171, a bill relating to unclaimed life insurance benefits. The American Council of Life Insurers ("ACLI") is a national trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. ACLI members represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. There are 260 ACLI member companies licensed to do business in North Dakota, accounting for 91 percent of the ordinary life insurance in force in the state.

Thank you Representatives Keiser and Kasper for introducing important legislation clarifying life insurer duties regarding unclaimed benefits. The life insurance industry recognizes the critical importance of prompt and timely payment of claims, which is reflected in their strong record of meeting their obligations to policyholders. In 2012 alone, life insurers paid out more than \$62 billion in life insurance benefits to policyholders. While the amount of unclaimed life insurance benefits at issue represents a very small percentage of total claims paid, we know the percentages represent real people. Accordingly, life insurers are taking proactive measures to identify deceased policyholders and locate their beneficiaries to assist them with making a claim. However, there are currently state standards for these efforts only in three states, to date. For these reasons, ACLI supports uniform and appropriate standards for the administration of unclaimed policy benefits.

The issue of standards for unclaimed life insurance benefits is evolving rapidly and there has been much legislative, regulatory and judicial activity since the announcement of the first multistate settlement agreement between a major life insurer and state unclaimed property administrators in Spring 2011. Unfortunately, the judicial, legislative and regulatory response has produced outcomes that are inconsistent. For example:

- The multistate settlement agreements announced so far between life insurers and insurance regulators or unclaimed property administrators are not uniform in material respects;
- State laws enacted to date, based on a model law developed by the National Conference of Insurance Legislators, vary in key respects, such as the frequency of U.S. Social Security Death Mater File searches (KY – quarterly; MD – semi-annually; AL – once every three years), the search methodology, and the products covered or exempted;
- State lost policy search programs implemented in seven states and in development in at least two additional states are substantially dissimilar in their forms, protocols and technology requirements.

Recent judicial activity has been increasing and should be considered prior to taking any legislative action. The Ohio courts, most recently an Ohio Appellate Court, have ruled that the administration of life insurance benefits is governed by contractual obligations and that an insurer has no affirmative duty to search the United States Social Security Death Master File. In reaching their decision, the court stated that, "...a finding obligating [insurance company name] to solicit or gather information pertaining to an

insured's death would be contrary to the terms contained in the insurance policy."¹ Moreover, in Kentucky, a lawsuit has been filed by insurers concerned about a number of provisions of the recently adopted unclaimed life benefits law which was based on the National Conference of Insurance Legislators Model Unclaimed Life Insurance Benefits Act. In particular, the companies instituting the lawsuit are concerned about the retroactive effect of the law on current life insurance contracts and the extraterritorial nature of the application of the unclaimed life benefits law. In brief, the plaintiffs contend that requiring a costly cross-check of the DMF against in-force business is a retroactive application of law impairing existing contracts. The companies argue that the law should apply only to policies entered into after the effective date of the law. Moreover, because the provisions of the law are not specific to policies issued or delivered in the state of Kentucky, the application of the law could lead to confusing and redundant requirements when applied to policies written or delivered in other states. Similarly, the legislation before you today is not specific to insurance policies issued or delivered in North Dakota and, therefore, may raise questions regarding extraterritorial application. It is unclear when the Kentucky court will rule upon the constitutional challenge to an NCOIL-type law, upon which the ND legislation is based. Depending on the outcome, this legislature may wish to consider amendments or alternatives to the HB 1171 that accomplish its objectives in a manner that passes constitutional muster.

Searches of the death master file are not a substitute for verification of a death through the policy claims process and obtaining a certified death certificate before a claim is paid. In an audit of the Social Security Death Master file released last July, the Office of the Inspector General found that the Social Security Administration did not include approximately 1.2 million deaths in the DMF which could result in erroneous benefit payments by federal agencies and hinder the ability other government agencies and the private sector to identify and prevent identity fraud. (Office of the Inspector General, Social Security Administration, *Title II Deceased beneficiaries Who Do Not Have Death Information on the Numident*², July 2012 A-09-11-21171, Audit Report.) Life insurers are experimenting with new technology to use the DMF to better assist policyholders and their beneficiaries. However, use of the DMF is far from an exact science or simple search tool or process for life insurers.

The ACLI recognizes that there are increased expectations by legislators and regulators for life insurers to provide additional assistance to beneficiaries by conducting regular DMF searches. However, the lack of uniform standards and approaches for identifying deceased policyholders and contacting their beneficiaries prior to receipt of a claim has resulted in significant compliance, personnel and technology challenges and expenses for life insurers as they attempt to modernize their systems and practices to meet the expectations of legislators and regulators. Moreover, if these disparate state legislative and regulatory standards continue to proliferate, life insurers will expend millions of dollars of unnecessary costs in complying with state-by-state approaches. Therefore, we appreciate the leadership of Chairman Keiser and this committee regarding your focus on clear, efficient and effective standards. The ACLI looks forward to working with this committee to develop such standards.

Thank you for considering our position in relation to House Bill 1171 regarding unclaimed life insurance benefits. Please contact Levi Andrist at (701) 258-7899 (landrist@vogellaw.com) or Kate Kiernan at 202-624-2463 (katekiernan@acli.com) with questions.

¹ *Andrews v. Nationwide Mut. Ins. Co.*, 2012-Ohio-4935 (Ohio Ct. App., 8th App. Dist. 2012).

² Numident is an acronym for "Numerical Identification System", the Social Security Administration's computer database file of an abstract of the information contained in an application for a United States Social Security number (Form SS-5). It contains the name of the applicant, place and date of birth, and other information. The Numident file contains all Social Security numbers since they first were issued in 1936.

① 1-22-2013 pm
1171

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1171

Page 1, line 2, after "benefits" insert "; and to amend and reenact section 47-30.1-07 of the of the North Dakota Century Code, relating to the state's unclaimed property act"

Page 3, line 20, replace "pursuant to" with "under"

Page 3, line 21, replace "An" with "Within one hundred twenty days following a potential match identified as a result of a death master file or revised death master file match, an"

Page 3, line 21, remove "upon the expiration of the"

Page 3, line 22, remove "statutory time period for escheat"

Page 3, line 28, replace "such" with "providing"

Page 3, line 28, after "notice" insert "under subsection 7"

Page 3, after line 30, insert:

Application.

Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract or policy to the extent the laws do not conflict with this chapter."

Page 4, after line 2, insert:

"SECTION 2. AMENDMENT. Section 47-30.1-07 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-07. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three years. If the policy or annuity contract provides for death benefits and is covered under section 1 of this Act, the insurance company shall comply with section 1 of this Act.
2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.
3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

- a. The company knows that the insured or annuitant has died; or
 - b.
 - (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
 - (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
 - (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.
4. For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.
 5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.
 6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer, within four months after ninety days following the company learning of the death, the company shall take reasonable steps to pay the proceeds to the beneficiary:
 - a. Complete a good-faith effort, which the company shall document, to confirm the death of the insured or annuitant against other available records and information; and
 - b. Determine whether benefits are due in accordance with the applicable insurance policy or annuity contract, and if benefits are due in accordance with the applicable policy or contract the company shall:
 - (1) Use good-faith efforts, which the company shall document, to locate the beneficiary or beneficiaries; and
 - (2) Provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy or contract.

7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:
- a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;
 - b. The address of each beneficiary; and
 - c. The relationship of each beneficiary to the insured."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 12, after "Semiannually" insert "thereafter"

Page 2, line 15, after the underscored period insert "Although the insurer may schedule and conduct the semiannual comparisons required under this section to coordinate with the May first and November first deadlines for delivery of property to the state abandoned property office as provided under section 47-30.1-17, the insurer may not exceed the six-month time requirement provided under subsection 8."

Page 2, line 16, after "each" insert "possible death of an insured of which an insurer becomes aware and for each"

Page 2, line 17, replace "ninety" with "one hundred twenty"

Page 2, line 17, after the second "match" insert "or becoming aware of the possible death"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 2, line 29, after "each" insert "possible death of an insured of which an insurer becomes aware and for each"

Page 3, line 8, after "4." insert "For purposes of complying with this section, an insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 8, after "each" insert "possible death of which an insurer becomes aware and for each"

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "six months"

Page 3, line 21, after "following" insert "a possible death of an insured of which an insurer becomes aware or"

Page 3, line 29, replace "8." with "9."

Page 3, line 29, replace "7" with "8"

Page 4, after line 2, insert:

"Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner.

Page 4, line 6, after "practices" insert "- Liability limitation"

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 5, line 22, remove the overstrike over "four months"

Page 5, line 22, remove "ninety days"

Renumber accordingly

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1171

Introduced by

Representatives Keiser, Kasper

Senators Klein, O'Connell

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century
2 Code, relating to unclaimed life insurance benefits; and to amend and reenact section
3 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Contract" means an annuity contract issued in this state. The term does not include
10 an annuity used to fund an employment-based retirement plan or program in which the
11 insurer is not committed by terms of the annuity contract to pay death benefits to the
12 beneficiaries of specific plan participants.
- 13 2. "Death master file" means the United States social security administration's death
14 master file or any other database or service the commissioner has determined is at
15 least as comprehensive as the United States social security administration's death
16 master file for determining that an individual has reportedly died.
- 17 3. "Death master file match" means a search of the death master file or revised death
18 master file which results in a match of the social security number or of the name and
19 date of birth of an insured, annuity owner, or retained asset accountholder.
- 20 4. "Policy" means any policy or certificate of life insurance issued in this state which
21 provides a death benefit. The term does not include:
- 22 a. A policy or certificate of life insurance which provides a death benefit under an
23 employee benefit plan subject to the federal Employee Retirement Income
24 Security Act of 1974 [Pub. L. 93-406; 29 U.S.C. 1002 et seq.];

- 1 b. A policy or certificate of life insurance which provides a death benefit under an
- 2 employee benefit plan under any federal employee benefit program;
- 3 c. A policy or certificate of life insurance which is used to fund a preneed funeral
- 4 contract or prearrangement; or
- 5 d. A policy or certificate of credit life or accidental death insurance.
- 6 5. "Revised death master file" means the names added to the death master file since the
- 7 insurer's most recent semiannual comparison required under this chapter.

Insurer conduct.

- 9 1. ~~Within ninety days of the effective date of this Act~~Before November 1, 2014, an insurer
- 10 shall perform a comparison of the insurer's insureds' in-force life insurance policies
- 11 and retained asset accounts against a death master file in order to identify potential
- 12 matches of the insurer's insureds. Semiannually thereafter, an insurer shall perform a
- 13 comparison of the insurer's insureds' in-force life insurance policies and retained asset
- 14 accounts against the revised death master file in order to identify the potential
- 15 matches of the insurer's insureds. Although the insurer may schedule and conduct the
- 16 semiannual comparisons required under this section to coordinate with the May first
- 17 and November first deadlines for delivery of property to the state abandoned property
- 18 office as provided under section 47-30.1-17, the insurer may not exceed the six-month
- 19 time requirement provided under subsection 8.
- 20 2. For each possible death of an insured of which an insurer becomes aware and for
- 21 each potential match identified as a result of a death master file or revised death
- 22 master file match, within ninetyone hundred twenty days of the match or becoming
- 23 aware of the possible death, the insurer shall:
 - 24 a. Complete a good-faith effort, which the insurer shall document, to confirm the
 - 25 death of the insured or retained asset accountholder against other available
 - 26 records and information; and
 - 27 b. Review the insurer's records to determine whether the individual who has died
 - 28 purchased any other products with the insurer; and
 - 29 c. Determine whether benefits are due in accordance with the applicable policy or
 - 30 contract, and if benefits are due in accordance with the applicable policy or
 - 31 contract the insurer shall:

Sixty-third
Legislative Assembly

- 1 (1) Use good-faith efforts, which the insurer shall document, to locate the
2 beneficiary or beneficiaries; and
- 3 (2) Provide the appropriate claims forms or instructions to the beneficiary or
4 beneficiaries to make a claim, including the need to provide an official death
5 certificate, if applicable under the policy or contract.
- 6 3. With respect to group life insurance, for each possible death of an insured of which an
7 insurer becomes aware and for each potential match identified as a result of a death
8 master file or revised death master file match, the insurer shall confirm the possible
9 death of an insured if the insurer maintains at least the following information of those
10 covered under a policy or certificate:
- 11 a. The social security number or the name and date of birth;
12 b. Beneficiary designation information;
13 c. Coverage eligibility;
14 d. Benefit amount; and
15 e. Premium payment status.
- 16 4. For purposes of complying with this section, an insurer shall implement procedures to
17 account for:
- 18 a. Nicknames, initials used in lieu of a first or middle name, use of a middle name,
19 compound first and middle names, and interchanged first and middle names;
20 b. Compound last names, maiden or married names, and hyphens, blank spaces,
21 and apostrophes in last names;
22 c. Transposition of the month and date portions of a date of birth; and
23 d. Incomplete social security numbers.
- 24 5. To the extent permitted by law, for each possible death of which an insurer becomes
25 aware and for each potential match identified as a result of a death master file or
26 revised death master file match, the insurer may disclose minimum necessary
27 personal information about the insured or beneficiary to:
- 28 a. A person the insurer reasonably believes may be able to assist the insurer locate
29 the beneficiary; or
30 b. A person otherwise entitled to payment of the claims proceeds.

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1 5.6. An insurer or an insurer's service provider may not charge an insured, accountholder,
2 or beneficiary for any fees or costs associated with a comparison, search, or
3 verification conducted pursuant to this section.

4 6.7. The benefits from a life insurance policy or a retained asset account, plus any
5 applicable accrued interest must be first payable to the designated beneficiaries or
6 owners and if the beneficiaries or owners cannot be found, escheat to the state as
7 unclaimed property under chapter 47-30.1.

8 7.8. Within ~~one hundred twenty days~~ six months following a possible death of an insured of
9 which an insurer becomes aware or a potential match identified as a result of a death
10 master file or revised death master file match, an insurer shall notify the state
11 abandoned property office that:

12 a. A life insurance policy beneficiary or retained asset accountholder has not
13 submitted a claim with the insurer; and

14 b. The insurer has complied with subsections 2 and 3 and has been unable, after
15 good-faith efforts documented by the insurer, to contact the retained asset
16 accountholder, beneficiary, or beneficiaries.

17 8.9. Upon providing notice under subsection 7.8, an insurer immediately shall submit the
18 unclaimed life insurance benefits or unclaimed retained asset accounts, plus any
19 applicable accrued interest, to the state abandoned property office as provided under
20 chapter 47-30.1.

21 Rulemaking.

22 The commissioner may adopt rules to limit an insurer's death master file comparisons and
23 revised death master file comparisons required under this chapter to the insurer's electronic
24 searchable files, to allow the commissioner to approve an insurer's plan and timeline for
25 conversion of the insurer's files to electronic searchable files, and to allow for phasing in
26 compliance with this chapter according to an insurer's plan and timeline approved by the
27 commissioner.

28 Application.

29 Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract
30 or policy to the extent the laws do not conflict with this chapter.

1 **Unfair trade practices - Liability limitation.**

2 Failure to meet any requirement of this chapter is a violation of chapter 26.1-04. This
3 chapter does not create a private cause of action for violation of this chapter. Once an insurer
4 submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any
5 applicable accrued interests, to the state abandoned property office in compliance with this
6 chapter, the insurer is relieved and indemnified from additional liability to any person relating to
7 the proceeds submitted. This indemnification from liability is in addition to any other protections
8 provided by law.

9 **SECTION 2. AMENDMENT.** Section 47-30.1-07 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **47-30.1-07. Funds owing under life insurance policies.**

- 12 1. Funds held or owing under any life or endowment insurance policy or annuity contract
13 that has matured or terminated are presumed abandoned if unclaimed for more than
14 three years after the funds became due and payable as established from the records
15 of the insurance company holding or owing the funds, but property described in
16 subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three
17 years. If the policy or annuity contract provides for death benefits and is covered under
18 section 1 of this Act, the insurance company shall comply with section 1 of this Act.
- 19 2. If a person other than the insured or annuitant is entitled to the funds and an address
20 of the person is not known to the company or it is not definite and certain from the
21 records of the company who is entitled to the funds, it is presumed that the last known
22 address of the person entitled to the funds is the same as the last known address of
23 the insured or annuitant according to the records of the company.
- 24 3. For purposes of this chapter, a life or endowment insurance policy or annuity contract
25 not matured by actual proof of the death of the insured or annuitant according to the
26 records of the company is matured and the proceeds due and payable if:
 - 27 a. The company knows that the insured or annuitant has died; or
 - 28 b. (1) The insured has attained, or would have attained if the insured were living,
29 the limiting age under the mortality table on which the reserve is based;
 - 30 (2) The policy was in force at the time the insured attained, or would have
31 attained, the limiting age specified in paragraph 1; and

- 1 (3) Neither the insured nor any other person appearing to have an interest in
2 the policy within the preceding three years, according to the records of the
3 company, has assigned, readjusted, or paid premiums on the policy,
4 subjected the policy to a loan, corresponded in writing with the company
5 concerning the policy, or otherwise indicated an interest as evidenced by a
6 memorandum or other record on file prepared by an employee of the
7 company.
- 8 4. For purposes of this chapter, the application of an automatic premium loan provision or
9 other nonforfeiture provision contained in an insurance policy does not prevent a
10 policy from being matured or terminated under subsection 1 if the insured has died or
11 the insured or the beneficiary of the policy otherwise has become entitled to the
12 proceeds thereof before the depletion of the cash surrender value of a policy by the
13 application of those provisions.
- 14 5. If the laws of this state or the terms of the life insurance policy require the company to
15 give notice to the insured or owner that an automatic premium loan provision or other
16 nonforfeiture provision has been exercised and the notice, given to an insured or
17 owner whose last known address according to the records of the company is in this
18 state, is undeliverable, the company shall make a reasonable search to ascertain the
19 policyholder's correct address to which the notice must be mailed.
- 20 6. Notwithstanding any other provision of law, if the company learns of the death of the
21 insured or annuitant and the beneficiary has not communicated with the insurer, within
22 four months ~~after ninety days~~ following the company learning of the death, the
23 company shall ~~take reasonable steps to pay the proceeds to the beneficiary;~~
24 a. Complete a good-faith effort, which the company shall document, to confirm the
25 death of the insured or annuitant against other available records and information;
26 and
27 b. Determine whether benefits are due in accordance with the applicable insurance
28 policy or annuity contract, and if benefits are due in accordance with the
29 applicable policy or contract the company shall:
30 (1) Use good-faith efforts, which the company shall document, to locate the
31 beneficiary or beneficiaries; and

- 1 (2) Provide the appropriate claims forms or instructions to the beneficiary or
- 2 beneficiaries to make a claim, including the need to provide an official death
- 3 certificate, if applicable under the policy or contract.
- 4 7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form
- 5 issued by an insurance company under any life or endowment insurance policy or
- 6 annuity contract to an insured or owner who is a resident of this state must request the
- 7 following information:
- 8 a. The name of each beneficiary, or if a class of beneficiaries is named, the name of
- 9 each current beneficiary in the class;
- 10 b. The address of each beneficiary; and
- 11 c. The relationship of each beneficiary to the insured.



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Before the Senate Standing Committee on Industry, Business and Labor
Wednesday, March 20, 2013

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Thank you to Representative Keiser for shepherding this important legislation through the process in North Dakota to clarifying life insurer duties regarding unclaimed benefits. The life insurance industry recognizes the critical importance of prompt and timely payment of claims, which is reflected in their strong record of meeting their obligations to policyholders. In 2012 alone, life insurers paid out more than \$62 billion in life insurance benefits to policyholders. While the amount of unclaimed life insurance benefits at issue represents a very small percentage of total claims paid, we know the percentages represent real people. Accordingly, life insurers are taking proactive measures to identify deceased policyholders and locate their beneficiaries to assist them with making a claim. However, there are currently state standards for these efforts in only three states, to date. For these reasons, ACLI supports uniform and appropriate standards for the administration of unclaimed policy benefits.

The issue of standards for unclaimed life insurance benefits is evolving rapidly and there has been much legislative, regulatory, and judicial activity since the announcement of the first multistate settlement agreement between a major life insurer and state unclaimed property administrators in the spring of 2011. Unfortunately, the judicial, legislative, and regulatory response has produced outcomes that are inconsistent. For example:

- The multistate settlement agreements announced so far between life insurers and insurance regulators or unclaimed property administrators are not uniform in material respects;
- State laws enacted to date, based on a model law developed by the National Conference of Insurance Legislators, vary in key respects, such as the frequency of U.S. Social Security Death Master File searches (KY – quarterly; MD – semi-annually; AL – once every three years), the search methodology, and the products covered or exempted;
- State lost policy search programs implemented in seven states and in development in at least two additional states are substantially dissimilar in their forms, protocols and technology requirements.

Recent judicial activity has been increasing and should be considered prior to taking any legislative action. The Ohio courts, most recently an Ohio Appellate Court, have ruled that the administration of life insurance benefits is governed by contractual obligations and that an insurer has no affirmative duty to search the United States Social Security Death Master File. In reaching their decision, the court stated that, "...a finding obligating [insurance company name] to solicit or gather information

pertaining to an insured's death would be contrary to the terms contained in the insurance policy."¹ Moreover, in Kentucky, a lawsuit has been filed by insurers concerned about a number of provisions of the recently adopted unclaimed life benefits law which was based on the National Conference of Insurance Legislators Model Unclaimed Life Insurance Benefits Act. In particular, the companies instituting the lawsuit are concerned about the retroactive effect of the law on current life insurance contracts and the extraterritorial nature of the application of the unclaimed life benefits law. In brief, the plaintiffs contend that requiring a costly cross-check of the DMF against in-force business is a retroactive application of law impairing existing contracts. The companies argue that the law should apply only to policies entered into after the effective date of the law. Moreover, because the provisions of the law are not specific to policies issued or delivered in the state of Kentucky, the application of the law could lead to confusing and redundant requirements when applied to policies written or delivered in other states. Similarly, the legislation before you today is not, without amendments, specific to insurance policies issued or delivered in North Dakota and, therefore, may raise questions regarding extraterritorial application. It is unclear when the Kentucky court will rule upon the constitutional challenge to an NCOIL-type law, upon which the ND legislation is based. Depending on the outcome, this legislature may wish to consider amendments or alternatives to HB 1171 that accomplish its objectives in a manner that passes constitutional muster.

Searches of the death master file are not a substitute for verification of a death through the policy claims process and obtaining a certified death certificate before a claim is paid. In an audit of the Social Security Death Master file released last July, the Office of the Inspector General found that the Social Security Administration did not include approximately 1.2 million deaths in the DMF which could result in erroneous benefit payments by federal agencies and hinder the ability other government agencies and the private sector to identify and prevent identity fraud. (Office of the Inspector General, Social Security Administration, *Title II Deceased beneficiaries Who Do Not Have Death Information on the Numident*², July 2012 A-09-11-21171, Audit Report.) Life insurers are experimenting with new technology to use the DMF to better assist policyholders and their beneficiaries. However, use of the DMF is far from an exact science or simple search tool or process for life insurers.

The ACLI recognizes that there are increased expectations by legislators and regulators for life insurers to provide additional assistance to beneficiaries by conducting regular DMF searches. However, the lack of uniform standards and approaches for identifying deceased policyholders and contacting their beneficiaries prior to receipt of a claim has resulted in significant compliance, personnel and technology challenges and expenses for life insurers as they attempt to modernize their systems and practices to meet the expectations of legislators and regulators. Moreover, if these disparate state legislative and regulatory standards continue to proliferate, life insurers will expend millions of dollars of unnecessary costs in complying with state-by-state approaches. Therefore, we appreciate the leadership of Representative Keiser and this committee regarding your focus on clear, efficient, uniform, and effective standards. The ACLI looks forward to working with this committee to develop such standards.

Thank you for considering our position and the attached amendments in relation to House Bill 1171 regarding unclaimed life insurance benefits. Please contact Levi Andrist at (701) 258-7899 (landrist@vogellaw.com) or Kate Kiernan at 202-624-2463 (katekiernan@acll.com) with questions.

¹ Andrews v. Nationwide Mut. Ins. Co., 2012-Ohio-4935 (Ohio Ct. App., 8th App. Dist. 2012).

² Numident is an acronym for "Numerical Identification System", the Social Security Administration's computer database file of an abstract of the information contained in an application for a United States Social Security number (Form SS-5). It contains the name of the applicant, place and date of birth, and other information. The Numident file contains all Social Security numbers since they first were issued in 1936.

ACLI'S PROPOSED AMENDMENTS TO HOUSE BILL NO. 1171

Page 1, line 9 after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety" with "one-hundred twenty"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "For purposes of complying with this section, an insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, remove lines 21 through 30

Page 4, remove lines 1 and 2

Page 4, after line 2, insert:

"Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, remove lines 8 through 30

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 11

Renumber accordingly

**TESTIMONY OF LINDA FISHER
Unclaimed Property Administrator
North Dakota Department of Trust Lands**

IN SUPPORT OF HOUSE BILL NO. 1171

**Senate Industry, Business, and Labor
March 20, 2013**

Chairman Klein and members of the Committee, I am Linda Fisher, Unclaimed Property Administrator for the ND Department of Trust Lands. I am here today to testify in support of House Bill 1171 as it relates to owners' rights and the North Dakota Uniform Unclaimed Property Act (the Act).

As you may know, the Act, which is found in NDCC 47-30.1, and adopted in some form in all 50 states and four Canadian provinces, has been in effect and administered by the Board of University and School Lands in North Dakota since 1975. In the interest of consumer protection, the Act requires that after a certain time period has elapsed, business owners report unclaimed financial assets to respective State Unclaimed Property Administrators. In turn, the States undertake initiatives aimed at returning the property to the rightful owner or their heirs.

While the Act exempts some specific property types, such as gift certificates and cooperative patronage dividends, from reporting, life insurance death benefits have long been a reportable property under explicit language found in NDCC 47-30.1-07 (*Funds owing under life insurance policies*). Since 2010, the North Dakota Board of University and School Lands' Unclaimed Property Division, has been under contract with multiple firms to conduct multi-state compliance reviews specifically in the area of unpaid and unreported death benefits. Generally speaking, those review procedures are being carried out in the manner described within this bill.

It should be noted that life insurance companies do have reporting histories in North Dakota, but what has historically been received may have been limited to uncashed checks on policies where claims were initiated by knowing beneficiaries. However, it goes without saying that many beneficiaries are in fact "unknowing".

Life insurance companies already utilize death master files to identify deceased policy holders for purposes of discontinuing distributions to decedents. This proposed legislation essentially requires that the same information be gathered on behalf of policy beneficiaries as well. The language requiring that reasonable attempts be made to identify and notify policy beneficiaries provides a practical approach to enabling those beneficiaries to receive the funds to which they are entitled under the terms of the policy.

Further, the reporting of residual proceeds to the States' unclaimed property program provides even more opportunities for missing and/or unlocatable beneficiaries to be made aware that the asset exists and is waiting to be claimed.

As such, we respectfully request a "do pass" recommendation of HB 1171.

47-30.1-07. Funds owing under life insurance policies.

1. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subdivision b of subsection 3 is presumed abandoned if unclaimed for more than three years.

2. If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

3. For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

- a. The company knows that the insured or annuitant has died; or
- b. (1) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;
- (2) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph 1; and
- (3) Neither the insured nor any other person appearing to have an interest in the policy within the preceding three years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

4. For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection 1 if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

5. If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

6. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

7. Commencing two years after July 1, 1985, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information: a. The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class; b. The address of each beneficiary; and c. The relationship of each beneficiary to the insured.

Testimony of John R. Camillo for UCP Lobbying Coalition
In Opposition to HB 1117
March 20, 2013

Chairman Klein and Members of the Senate Industry, Business & Labor Committee, my name is John Camillo. I am the Senior Vice President, Secretary and Group Counsel of the Kemper Home Service Companies which are headquartered in St. Louis, Missouri. I am here to offer testimony on behalf of a coalition of small and mid-sized insurance companies with respect to HB 1117 relating to unclaimed life insurance benefits. With me this morning is Gerry Kraus, the Vice President of Compliance at Homesteaders Life Company, a member of our coalition group.

HB 1117 is based upon the Model Unclaimed Life Insurance Benefits Act which was adopted by NCOIL in November 2011. The NCOIL Model requires all life insurance companies to match their in-force life insurance policies against the Social Security Death Master File (the "Death Master File") on a retroactive basis. Different versions of the NCOIL Model Act have since been enacted in four states, namely Kentucky, Maryland, Alabama and New York. Similar bills also have been introduced in several other states.

This morning I would like to bring to your attention several significant developments that have occurred since the adoption of the original NCOIL Model Act.

- First, with respect to the Kentucky statute that went into effect on January 1, 2013, three of the Kemper Life Insurance Companies filed suit in November in Kentucky State Court challenging the "retroactive" application of that statute to existing in-force policies adopted before the statute's effective date because it would impair insurers' contract rights under their policies in violation of both the Kentucky and U.S. constitutions. Requiring insurers to assume the significant additional burdens required by the NCOIL Model Act for existing insurance policies alters the contractual expectations of the parties and imposes unforeseen costs and obligations on insurers. Summary Judgment motions have been filed on behalf of both the Plaintiffs and the Defendant in that lawsuit. Three major national insurance trade associations, namely the Life Insurance Conference (the "LIC"), the National Alliance of Life Companies (the "NALC") and the American Fraternal Alliance, representing more than 200 life insurance companies, many of which do business in North Dakota, have filed amicus briefs in support of Kemper's Summary Judgment motion. The Summary Judgment motions were orally argued on March 11 and the trial judge has said that he will do his best to render a decision before the end of March.

- Second, with respect to Alabama, Rep. Greg Wren, who sponsored that state’s unclaimed life insurance benefits statute, is now sponsoring an amendment to his own statute to make it “prospective” only. Back on October 15, 2012, Rep. Wren, who is the President-Elect of NCOIL, sent a letter to the Chair and Members of the NCOIL Life Insurance and Financial Planning Committee in which he stated, and I quote, “Application of the Model Act to existing business may violate many states constitutional prohibition against retroactive legislation [and] may be subject to challenge as impairing the insurance company’s rights under its existing insurance policies by requiring searches of its in-force business.”
- In New Mexico, Sen. Carroll Leavell (the immediate Past President of NCOIL) introduced a similar unclaimed life insurance benefits bill, and with the support of the Superintendent of Insurance, John Franchini, recently sponsored an amendment to his own bill to make it apply only on a “prospective” basis to policies issued after the effective date for those insurance companies that have never previously used the Death Master File to search for deceased insureds. That bill, with the amendments, passed through the New Mexico legislature on this past Saturday and is now on its way to the Governor for signature.

At this time, I would like to point out that we have asked a major national law firm Sidley Austin LLP to review the constitutionality of the retroactive application of HB 1117 to existing in-force policies adopted before the statute’s proposed effective date. Their conclusion is that retroactive enforcement of HB 1117 would violate the Contract Clause of both the United States and North Dakota Constitutions.¹ As the Supreme Court of North Dakota has made clear, “Both the Constitution of the United States and the Constitution of the State of North Dakota prohibit passage of any law impairing the obligations of contracts.”² In interpreting the North Dakota Contract clause, the Supreme Court of North Dakota has held that if a statute “change[s] the substantial rights of ...parties” under a contract, that statute “cannot be constitutionally applied to [contracts] executed prior to its effective date.”³ (declaring that statute that attempted to shorten the redemption period for “mortgages executed prior to its effective date” was unconstitutional as applied to those mortgages).

¹ U.S. Const. art. I., § 10; N.D. Const. art. I, § 18.

² *First Federal Savings and Loan Association v. Haley*, 357 N.W. 2d 492, 494 (N.D. 1984).

³ *Id.* at 494-95.

Separately, in N.D.C.C. § 1-02-30, the Legislature has declared that “No provision contained in this code may be so construed as to *impair any vested right or valid obligation existing when it takes effect.*” (Emphasis added). Here, retroactive enforcement of HB 1117 would impair existing rights under insurers’ in-force policies, which obligate the beneficiary or an insured’s estate to furnish the insurer with due proof of death as a condition precedent to the payment of benefits. Under N.D.C.C. § 1-02-30, a North Dakota court would be compelled to “construe the statute in a way that does not impair that valid obligation” and thus, would not enforce the statute retroactively.⁴

There also have been several other significant developments on the litigation front. Most importantly, on October 25, 2012, the Court of Appeals of Ohio affirmed the dismissal of a class action lawsuit that had been brought against Nationwide Mutual Insurance Company alleging that Nationwide had breached its duty of good faith and fair dealing by failing to make reasonable attempts to determine when the beneficiaries of a life insurance policy are entitled to death benefit proceeds.⁵ The Court of Appeals of Ohio held, and I quote, “insurance contracts create a clear and unambiguous condition precedent... that requires, among other things, that appellants provide Nationwide with proof of death for their life insurance contracts to be honored. It is clear from the contracts, as well as from the case law, that the standard language used places the burden on the claimant or the beneficiary to produce the proof of death.”⁶

The West Virginia State Treasurer has filed 69 separate lawsuits against 69 different life insurance companies alleging that each Defendant should be required to seek out potential claims by checking its insureds’ names against the Death Master File. Motions to dismiss those complaints are in the process of being filed and a decision on those motions is expected before the end of the summer.

Finally, let me address the ACLI’s policy position on this issue. I already mentioned that three other major national insurance trade associations, namely the LIC, the NALC and the American Fraternal Alliance, have taken public positions in opposition to the mandatory use of the Death Master File on a retroactive basis.

⁴ *Tedford v. Workforce Safety and Ins.*, 738 N.W.2d 29, 34 (N.D. 2007).

⁵ *Andrews v. Nationwide Mut. Ins. Co.*, 2012-Ohio-4935 (Ohio Ct. App., 8th App. Dist. 2012)

⁶ *Id.* at ¶ 24.

On January 21, 2013, the ACLI submitted written testimony to this Committee on House Bill 1117. In that testimony the ACLI noted, and I quote, "The issue of standards for unclaimed life insurance benefits is evolving rapidly and there has been much legislative, regulatory and judicial activity since the announcement of the first multistate settlement agreement between a major life insurer and state unclaimed property administrators in spring 2011." The ACLI's testimony went on to recommend, and again I quote, "Recent judicial activity has been increasing and should be considered prior to taking any legislative action." Although the ACLI still supports the NCOIL Model Act, they have announced, in recognition of these recent developments, that they will not oppose any amendment to make a bill "prospective" only. I would also note that on January 14, 2013, a group of ACLI member companies approved an alternative approach to the NCOIL Model Act that distinguishes between those life insurers that used the Death Master File and those life insurers that did not use the Death Master File. The life insurers who use the Death Master File are insurers who issue annuities which pay during the life of their insured. These insurers use the Death Master File to terminate their annuity contracts. This make sense, if an insurer uses the Death Master File to terminate annuities, it should also use the Death Master File to pay out on life insurance claims of its life insurance policies.

There is one last issue that I would like to bring to this Committee's attention. We know that six large insurance companies, which had been using the Death Master File asymmetrically, i.e. for their annuities but not for their life insurance policies, have entered into multi-state settlements whereby they have agreed to match their life insurance policy files against the Death Master File retroactively. However, unlike these six large companies, there are many small and mid-size life insurance companies which do not sell annuities and have never used the Death Master File to search for deceased insureds. Requiring these smaller companies to use the Death Master File retroactively would impose significant costs on them that were never anticipated or priced into their policies, and, in some cases, could even threaten the financial solvency of some small companies. We must remember that those companies have done nothing wrong and have fully lived up to all their obligations under their insurance contracts which I might mention were reviewed and approved by all insurance departments including the North Dakota Insurance Department.

In conclusion, I would urge this Committee to take a step back and consider the current legal landscape regarding unclaimed property which is still evolving. I also recognize that technological improvements have occurred that may require insurance companies to change their claims handling processes. But those changes should not be required to be made retroactively to the detriment of many small and mid-sized life insurance companies which have not done anything wrong. Instead, any required use of the Death Master File should be “prospective” only, i.e. apply to new policies issued for delivery in the State of North Dakota on or after the effective date of the statute so that insurance companies can plan and price for these changes. This, I submit, is the fair thing to do for consumers, as well as small and mid-sized insurance companies, and would eliminate the threat of any constitutional challenge to the statute.

Therefore, on behalf of our lobbying coalition, I urge you to amend HB 1117 to make it prospective only and to clarify that it only applies to insurance policies, annuity contracts and retained asset accounts issued and delivered in this state. If this committee does not amend HB 1117 to make it prospectively apply to insurance policies written after the effective date, I would strongly urge this committee to recommend a “Do Not Pass” for HB 1117.

Thank you for your time and attention and I will be happy to answer any questions.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

Page 6, line 11, after the period insert:

“8. This chapter shall apply to life insurance policies, annuity contracts and retained asset accounts issued and delivered in this state and which are issued or entered into on and after the effective date of this Act.”

Renumber Accordingly

ACLI'S PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171
(Version 3)

Page 1, line 9 after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety" with "one-hundred twenty"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement reasonable procedures to account for common variations in data, including:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, remove lines 21 through 30

Page 4, remove lines 1 and 2

Page 4, after line 2, insert:

"Rulemaking.

(1)

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "practices" insert "- Liability limitation"

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 16, remove "If the policy or annuity contract provides for death benefits and is covered under"

Page 4, remove line 17

Page 5, line 21 remove the underscored comma

Page 5, line 22, remove the overstrike over "~~four months after~~" and remove "ninety days following the company learning of"

Page 5, line 23, remove the overstrike over "~~take reasonable steps to pay the proceeds to the beneficiary.~~" and remove the underscored colon

Page 5, remove lines 24 through 31

Page 6, remove lines 1 through 3

Renumber accordingly

March 26, 2013

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "four months"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert: "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert: "Every insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, remove lines 21 through 30

Page 4, replace lines 1 and 2 with:

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner.

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

Page 4, line 7, after the period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 16, remove "if the policy or annuity contract provides for death benefits and is covered under"

Page 4, remove line 17

Page 5, line 21, remove the underscored comma

Page 5, line 22, remove the overstrike over "~~four months after~~"

Page 5, line 22, remove "ninety days following the company learning of"

Renumber accordingly

① #131171
4-12-2013

Keiser, George J.

From: Gerry Kraus <GKraus@Homesteaderslife.com>
Sent: Friday, March 22, 2013 1:10 PM
To: Keiser, George J.
Cc: 'Camillo, John'; 'Thomas D Kelsch'

Rep. Keiser

During our lunch meeting this week I told you my company had used the Death Master File to verify deaths as part of our anti-fraud plan. When we did this, we sent our claims files to the service bureau and they reported back to us which ones they confirmed as deceased due to matching with a file on the DMF. This does not mean that we were a unilateral user in the same sense in which you are portraying us. We have never used the DMF to find out if people on our active files were dead, we only used the DMF to confirm that those on our claims files were dead. I see this as an important distinction and wanted to clarify.

Gerry Kraus
Vice President-Compliance
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Homesteaders Life Company
Preserving the Value of Funeral Service®
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KEMPER - WITRON

(2) 481171
4-12-2013

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO 12-CI-1441

ENTERED
APR 01 2013
FRANKLIN CIRCUIT COURT SALLY JUMP, CLERK

**UNITED INSURANCE COMPANY OF AMERICA;
THE RELIABLE LIFE INSURANCE COMPANY, and
RESERVE NATIONAL INSURANCE COMPANY**

PLAINTIFFS

v.

OPINION AND ORDER

**COMMONWEALTH OF KENTUCKY,
KENTUCKY DEPARTMENT OF INSURANCE,
SHARON P. CLARK,
in her official capacity as Commissioner of the
KENTUCKY DEPARTMENT OF INSURANCE**

RESPONDENT

INTRODUCTION

This action is before the Court on Cross-Motions for Summary Judgment. The case arises out of a facial challenge to KRS § 304.15-420, which requires life insurance companies to make a good faith effort to determine whether benefits are due based on the Social Security Administration's Death Master File, and if so, attempt to locate beneficiaries and inform them of the claims procedure. Plaintiffs are insurance companies that argue the statute amounts to an unlawful retroactive regulation of their pre-existing life insurance contracts, which were formed without contemplating these requirements. Plaintiffs further argue that the statute violates the Contracts Clause of the Kentucky and United States Constitution. The Department of Insurance and Commissioner Sharon Clark argue that the statute is a valid exercise of the state's police power, and that the legislation is a necessary and appropriate measure to protect the interests of consumers, policyholders and beneficiaries. The Department further argues that the Plaintiffs

have failed to show any impairment of a vested or substantive right. Having reviewed the record, heard the arguments of counsel, and otherwise being sufficiently advised, this Court hereby GRANTS summary judgment for the Commonwealth for reasons more fully discussed below.

FACTUAL BACKGROUND

This case arises out of a dispute over whether insurance companies that are licensed to sell coverage in Kentucky should be required to check their list of insureds against the Social Security Administration's Death Master File. If a match is identified, the insurer must make a good faith effort to determine any benefits due, and locate the beneficiaries to inform them of the claim procedures. KRS § 304.15-420.

The Plaintiffs, life insurance companies¹ that do business in Kentucky, have "roughly 11,000 policies in force... from age zero to age 100." (Myers Deposition, p. 100) Currently they have about 3,000 non-premium paying policies in force in the State of Kentucky with insureds older than 70. In order to comply with this new statute, Plaintiffs:

"would need to acquire the Death Master File. We would need to perform the match, and based on potential matches, go through steps outlined in 1 and 2 of the statute, which is more than we do today. So we would likely need to hire personnel, train personnel to do the search; one, to confirm the death, two, to locate beneficiaries and to evaluate whether or not the individual potential matches are actually our insured. And then to confirm the death."
(Myers Testimony, P.94-95)

Plaintiffs testified that "the database itself is not expensive to acquire, and the number of policies we have in force would not be costly to run the match against." (Myers Testimony, p. 96-97) After running the search, the Plaintiffs estimate "statute is likely to more than double the

¹ Plaintiff insurance companies are smaller companies who do business mainly in Kentucky. National life insurance companies have engaged in multi-state global settlement with the government that requires them to check the Death Master File and notify beneficiaries of deceased insureds. (<http://www.lifehealthpro.com/2012/11/19/john-hancock-companies-settle-with-6-states>) Plaintiffs' in-force policies have lower face amounts than those offered by many other, national life insurance companies. The average face amount of United and Reliable's life insurance policies in force is approximately \$4,800 with a \$16 monthly premium, and Reserve's average is about \$8,000 with a \$37 monthly premium. (Plaintiffs' Motion for Summary Judgment, p. 4)

effort required to adjudicate policies as defined. So my rough guess is we likely would spend probably about 20 hours per match in order to meet the requirements of the statute.” (Myers Testimony, P. 98-99) This would result in an estimated \$20,000 to \$40,000 cost, although the estimates in time and cost were admitted by Plaintiffs as being based purely on speculation of IT and senior management. (Schallhorn Testimony, p. 80; p. 93) Regardless of its application to existing policies, the companies will still be required to put the technology and procedures in place to access the Death Master File for prospective application. (Schallhorn Testimony, p. 97)

Plaintiffs current claims procedures upon receipt of notice of death is to ask the person who contacted them to provide a copy of the death certificate, as well as a statement surrounding the death, and the original policy form. (Schallhorn Deposition, p. 38) In most cases, the only information the insurance companies have for beneficiaries is their name. (Myers Testimony, P. 96) In order to locate beneficiaries of a claimed insurance policy, Plaintiffs “first of all, talk to whoever it was that filed the claim and try to find out from them if they ... knew any information about the beneficiary... and then if they were unsuccessful there, they would probably do an internet search just to look for the beneficiary.” (Schallhorn Deposition, p. 106-107) When asked if Scallhorn thought that would constitute a good faith effort, he responded “Yes.” (Id.) The Plaintiffs interpret the law to require them “to go search for deaths...and claims. It puts the burden of proving death in order to pay a claim on the company instead of on the policyholder of the beneficiary, which could open the company up to all sorts of other potential litigation, I would think.” (Schallhorn Testimony, p. 120). The Department of Insurance, in oral arguments, stated its interpretation of the law is not to require companies to prove the death with a death certificate, but rather merely to make a good faith effort to learn of deaths through the Death Master File and make a good faith effort to attempt to give notice to potential beneficiaries. The

claims process would remain otherwise unchanged, which would require any beneficiary to follow the company's procedures detailed above.

Plaintiffs have brought an action in this Court for a Declaration of Rights to declare the law unconstitutional. The Plaintiffs argue the statute is facially invalid because no law can be retroactive in application under KRS § 446.080(3). They argue that the law effectively re-writes the terms of the contract to shift the burden in the claims process described above from the client to the insurer. In the alternative, they argue that the statute is unconstitutional under the Kentucky and United States' Constitution's Contracts Clause, which prohibits a law from substantially impairing a contractual relationship unless it serves a significant public purpose and is a narrowly tailored means of achieving that purpose. The Commonwealth disputes these arguments and submits that the statute is a valid exercise of the state's regulatory power over the business of insurance, and that it is an appropriate means of protecting the interests of consumers who are the beneficiaries of these insurance policies. (Defendant's Cross-Motion for Summary Judgment, p. 2)

STANDARD OF REVIEW

Summary judgment is granted when the court concludes there is no genuine issue of material fact for which the law provides relief. CR 56.03. Only when it appears from the facts that the nonmoving party cannot produce evidence at trial in favor of a judgment on his behalf should summary judgment be granted. Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476 (Ky. 1991). The record must be viewed in the light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. Id. A summary judgment movant has the initial burden of showing that no genuine of material fact exists,

whereupon the burden shifts, as a party opposing supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial. Hibbits v. Cumberland Valley Nat'l Bank and Trust Co., 977 S.W.2d 252 (Ky. Ct. App. 1998).

Any statute in the Commonwealth "carries a presumption of constitutionality." Commonwealth v. Halsell, 934 S.W.2d 552, 554 (Ky. 1996); Brooks v. Island Creek Coal Company, 678 S.W.2d 791, 792 (Ky. App. 1984). When a court reviews the constitutionality of a statute, it is obligated "to give it, if possible, an interpretation which upholds its constitutional validity." Halsell, at 554-555, *citing* American Trucking Ass'n v. Com. Transp. Cab., 676 S.W.2d 785, 789 (Ky. 1984); Gurnee v. Lexington-Fayette Urban County Gov't, 6 S.W.3d 852, 856 (Ky. Ct. App. 1999). "To succeed in a typical facial attack, [a plaintiff] would have to establish that no set of circumstances exists under which [the statute] would be valid, or that the statute lacks any plainly legitimate sweep." Disc. Tobacco City & Lottery, Inc. v. United States, 674 F.3d 509, 522 (6th Cir. 2012), *citing* United States v. Stevens, 559 U.S. 460 (2010) (internal citations and quotation marks omitted). Facial challenges are disfavored by the courts because they often rest on speculation, thereby risking "premature interpretatio[n] of statutes on the basis of factually barebones records." Id.

The Supreme Court has established a three part test to determine whether a state statute violates the Contracts Clause. First, the court must evaluate "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983). The severity of the impairment will increase the level of scrutiny. Id. "Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to

gains it reasonably expected from the contract does not necessarily constitute a substantial impairment.” *Id.* (internal citations removed) “In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past.” *Id.*

If the contractual relationship has been substantially impaired by the state regulation, the state must have a “significant and legitimate public purpose” to justify the regulation, such as remedying a broad and general social or economic problem. *Id.* The Court has indicated the public purpose need not address an emergency or temporary situation. *Id.* at 412. Finally, if a legitimate purpose exists, the court must determine whether the adjustment of contractual rights and responsibilities is based on reasonable conditions and “of a character appropriate to the public purpose justifying the legislation’s adoption.” *Id.* Unless the state itself is a contracting party, courts defer to legislative judgment as to the necessity and reasonableness of a particular measure. *Id.* at 413.

DISCUSSION

1. Statute Does Not Violate the Rule Against Retroactive Application

This statute does not alter the substantive contractual relations between the insured and the insurance company. Rather, it imposes regulatory (or remedial) obligations for the insurance company to identify and notify beneficiaries after the death of an insured. The expressed legislative purpose of the Act (“to require complete disclosure, transparency and accountability”²) is a valid exercise of the police or regulatory power of the state. Such remedial requirements “do no impair the rights a party possessed when he or she acted or give past conduct or transactions new substantive legal consequences, [and thus] they do not

² KRS 304.15-4200(1).

operate retroactively." Moore v. Sills, 307 S.W.3d 71, 81 (Ky. 2010). While the insurance company has a reasonable expectation that the state will not alter its contractual obligations, it has no reasonable expectation that the state will not impose reasonable regulatory requirements designed to enforce the pre-existing contract rights of insureds and beneficiaries.

Here, the legislature has sought to remedy the problem of insurance companies holding on to funds that should be paid to beneficiaries upon the death of an insured. The traditional industry practice allows insurance companies to stick their heads in the sand and ignore publicly available data regarding the deaths of their insureds, to the detriment of the beneficiaries (and the public). This statute remedies the problem by requiring insurance companies to check publicly available data bases and to take "good faith" steps to notify beneficiaries. While the statutory scheme enacted by our legislature may or may not be the best or most efficient way to achieve that goal, it is well within the scope of the legislature's police powers to regulate the business of insurance.

Applying such a remedial statute to claims that are pending at the time of its enactment does not violate the prohibition against retroactive legislation. Thornberry v. Aero Energy, 908 S.W.2d 109 (Ky.App. 1995). As the Court of Appeals has explained, "when a statute is purely remedial or procedural and does not violate a vested right, but operates to further a remedy or confirm a right, it does not come within the concept of retrospective law nor the general prohibition against the retrospective operation of statutes." Miracle v. Riggs, 918 S.W.2d 745, 747 (Ky.App. 1996). Here, the statute remedies a significant problem in the regulation of the business of insurance, a business which is highly regulated in all aspects.

The statute merely confirms the right of beneficiaries to the money the insured's premiums have already paid for, and thus the statute must be construed as a remedial or procedural requirement not subject to the prohibition against retroactive legislation. The regulatory requirements of the statute do not impair the vested rights of the parties to the contract of insurance. No insurer will be required to pay more than it is already contractually obligated to pay, and no beneficiary will receive more than the insured paid premiums to obtain. But by operation of this statute, beneficiaries will obtain the funds to which they are entitled in a more timely fashion, a classic protection of the rights of consumers that is well within the legislature's power.

2. The Statute Does Not Impair Any Vested Contractual Right.

The Plaintiffs' claim that the statute unconstitutionally impairs the obligations of contracts must be reviewed in light of well established case law that provides that the language of the contracts clause is subject to "the inherent police power of the state 'to safeguard the vital interests of its people.'" Energy Reserves Group v. Kansas Power and Light, 459 U.S. 400, 410 (1983) (citing Home Bld'g and Loan Ass'n v. Blaisdell, 290 U.S. 398, 434 (1934)). Here, the Court finds that the legislation is well within the regulatory power of the legislature.

Plaintiffs cannot show that any vested right is abridged by KRS § 304.15-420. Without an abridgement of a vested right, Plaintiffs cannot claim a contractual impairment. "A right is vested, for these purposes, only if it has ripened into a secure entitlement to present or future enjoyment. The mere expectation of enjoyment is not enough." King v. Campbell County, 217 S.W.3d 862 (Ky. App. 2006). Although Plaintiffs argue they have a vested right in a potential beneficiary's burden of notice, their argument is based on a right to future enjoyment of

insurance premium investments made as the custodian of money otherwise properly payable to the beneficiaries of deceased insureds. A right, "in order to be vested (in the constitutional sense) must be more than a mere expectation of future benefits or an interest founded upon an anticipated continuance of existing general laws." Louisville Shopping Center, Inc. v. City of St. Matthews, 635 S.W.2d 307, 310 (Ky. 1982).

In effect, the Plaintiffs' expectation was that the legislature would not disturb the traditional industry practice of ignoring publicly available data about the deaths of insureds, and that the legislature would not impose any regulatory requirement to find or notify beneficiaries. The Supreme Court has decided similarly that a taxpayer had no vested right in the Internal Revenue Code as written. In a highly regulated industry such as insurance, companies should be aware that their rights are always subject to the regulatory power of the state to enact consumer protections such as the one at issue here. Such changes in statute do not violate vested rights, or due process. United States v. Carlton, 512 U.S. 26 (1994).

The beneficiaries of the deceased insured's policy have the ability to submit proof of death at any time, and Plaintiffs have no contractual right to continued custody of the funds at all. In fact, Plaintiffs never have a guarantee as to how long they would have custody of the funds or what benefit they would receive from them. (Plaintiff's Cross-Motion for Summary Judgment, p. 11). While Plaintiffs may have had some expectation that some percentage of the insurance payments would be left for an extended term, there was never any guarantee they would receive such a benefit. The regulatory requirement that the Plaintiffs make a good faith effort to identify and give notice to potential claimants does not impair a vested right.

The Plaintiffs' argument suggests that notice is a required condition precedent to coverage under the policies in question, and that the statute substantially alters this requirement.

(Plaintiff's Motion for Summary Judgment, p. 16). Yet, notice is never mentioned in the contracts. Further, both Myers and Schallhorn Depositions concede that notice may be received from any source. When notice *is* material to the contract, it is provided for expressly. The contractual obligation that forms the basis for these insurance contracts is proof of death, not a notice of claim (Schallhorn Dep., p. 119). Plaintiffs rely on Andrews v. Nationwide Mutual Ins., 2012 WL 5289946³ for support of their position that the notice and proof of death requirement creates additional, non-contractual duties. However, this interpretation of the term "confirm the death" is the worst case scenario. The Department of Insurance does not take the position that insurance companies would be required to provide a death certificate upon request to "confirm the death," nor is such a strained reading of the statute justified.

The statute in question here may be read to allow the burden of proof of death to remain on any potential beneficiary. The statute imposes on insurance companies a requirement to check the Death Master File on a quarterly basis against their list of insureds and to attempt to notify listed beneficiaries. Regardless of the source of notice of the death of an insured, the current process insurance companies use to locate potential beneficiaries could be consistent with the statute's requirement to make a good faith effort to provide notice. The worst-case scenario of exorbitant costs of tracking down death certificates is entirely speculative. Such speculative injury is insufficient to sustain a facial challenge to the statute. Because notice is not a duty assigned to either party in any of the Plaintiffs contracts, there is no impairment of any contractual right in the statute's requirement for insurance companies to make a good faith effort to locate and notify beneficiaries of their right to receive funds.

³ The Andrews case is an unpublished Ohio Appeals Court decision. Unpublished decisions, even within this jurisdiction, "shall not be cited or used as binding precedent in any other case in any court of this state..." CR 76.28. While the case may be cited in limited circumstances, the Court does not find it persuasive.

3. Even if the statute impairs a contractual right, it is justified by a significant and legitimate public purpose

Although this Court finds there is no contractual right to be impaired, even if the additional procedural step of periodically checking the Death Master File and notifying insured clients is considered to be a contractual impairment, this burden is justified by a significant and legitimate public purpose, as explained by the Supreme Court in Kansas Power & Light Co. As the Court held there, "[i]n determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. ... The Court long ago observed: 'One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them.'" 459 U.S. at 411. There are few industries more highly regulated than the insurance industry, and all insurance companies have notice that the state may impose requirements on their operations to provide for the protection of policyholders and beneficiaries.

Many Kentucky citizens pay for insurance to help them plan for end of life costs. For insurance companies to attempt to keep the money through willful ignorance of the death of the insured amounts to unjust enrichment at the expense of some of the least privileged citizens in this state. On average, the life policies are for burial amounts of \$4,800 with monthly premiums of \$16. (Myers Deposition, p. 5). All but 42 of the policies at issue were sold door to door to people in lower socio-economic classes. (Id.) This Court finds legislative judgment on the necessity and reasonableness of this particular matter was well justified. In addition, the statute is narrowly tailored to serve the purpose of ensuring that beneficiaries who are lawfully entitled to these funds receive their money in due course.

This statute does not require the insurance companies to complete the claims process, despite Plaintiffs' argument to the contrary. The statute is narrowly tailored to give notice to

potential beneficiaries, but leaves intact the contractual burden of proving the death. This statute serves a significant public interest, and is narrowly tailored to address that interest. It cannot be considered a major impairment of any contractual right.

The Court has indicated the public purpose need not address an emergency or temporary situation. *Id.* at 412. Finally, if a legitimate purpose exists, the court must determine whether the adjustment of contractual rights and responsibilities is based on reasonable conditions and “of a character appropriate to the public purpose justifying the legislation’s adoption.” *Id.* Unless the state itself is a contracting party, courts defer to legislative judgment as to the necessity and reasonableness of a particular measure. *Id.* at 413.

The requirement to consult the Death Master File and give notice to beneficiaries does not shift any burden under these policies because no burden of notice was ever assigned in these contracts. Further, the claimants must still file a proof of death. When possible, a statute should be construed to be constitutional. Here the Court interprets the statute to require insurance companies to take reasonable steps to provide notice to potential beneficiaries; it does not require contractual rights regarding proof of death to be disturbed.

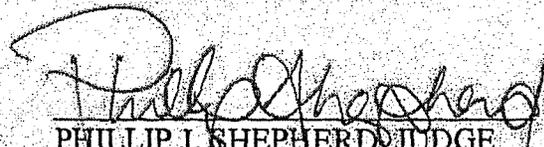
CONCLUSION

For the reasons stated above, the Commonwealth’s Motion for Summary Judgment is **GRANTED** and the Plaintiffs’ Motion for Summary Judgment is **DENIED**. In order to allow any party adversely affected by this ruling to seek post-judgment relief or obtain interlocutory relief regarding enforcement of the requirements of the statute, the Court *sua sponte* **ORDERS**:

1. Enforcement of the requirements of KRS 304.15-420 against the Plaintiffs in this action shall be **STAYED** pursuant to CR 62 for a period of ten (10) days from the entry of this

Opinion and Order to allow Plaintiffs to file any post-judgment motions or to seek interlocutory relief;

2. This stay of enforcement shall automatically dissolve at close of business on April 11, 2013 unless extended by the filing of a post-judgment motion under CR 59 or CR 60, or through relief under CR 62 or CR 65 by an appellate court of competent jurisdiction. So **ORDERED** this 1st day of April, 2013. This is a final and appealable order and there is no just cause for delay.


PHILLIP J. SHEPHERD, JUDGE
Franklin Circuit Court, Division I

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Keiser, George J.

① HB 1171
4-10-2013

From: Levi D. Andrist <landrist@vogellaw.com>
Sent: Saturday, April 13, 2013 3:51 PM
To: Keiser, George J.
Cc: Clark, Jennifer S.; Joel W Gilbertson
Subject: Unclaimed Property
Attachments: 1171 UCP Amendments (Conference Committee).docx

George,

Good afternoon. Joel and I have been working much of today with Kate, Bruce, and MJ Hudson (former insurance commissioner and national expert on unclaimed property laws) to figure out a way to come to a workable resolution that is good for North Dakotans and good for the life insurance industry. From our vantage point, a one-year early escheat provision is simply the shortest time period ACLI can swallow. We'd like to talk in more detail, but the bottom line is that anything less than a year is anti-consumer. Further, reducing it less than a year would send a strong signal to the industry that North Dakota wants to make it hard to do business in the state, especially when it comes to mandatory reporting requirements. There are a litany of other reasons, most of which you are aware, why allowing companies to retain the policies for a reasonable period of time is good for North Dakota policyholders and their beneficiaries.

Life insurers do not have strong incentives to hold on to policies. You've said many times that insurers want to pay benefits; that's what they do (and do it well!). And for an issue like unclaimed policies discovered by DMF searches – a tiny subset of policies – to be subjected to an incredibly aggressive timeline is neither workable nor reasonable.

Thus, we'd like you to consider the attached amendment, which is really the most ACLI can give up without opposing the bill. It sets up a one-year time period but limits the liability of the insurer for early escheating (which another section of the bill does for normal escheating). Please feel free to e-mail back or give my cell a call at 701-240-3372. I'll be available the rest of the weekend and early Monday morning if you want to talk through it.

I also wanted to confirm Jen's keen observations about a couple technical issues. Looking at the last marked-up copy, she is right that we can't simply change "three" to "one" (or "six months" for that matter) on lines 6 and 8 of page 5. Other policies that aren't subject to the DMF searches would be affected, and we realize that is not your intent (nor would we be amenable to that). Further, the sentence the Senate removed on lines 9 and 10 of page 5 we feel should remain out because of the Jen's good drafting in section 1 of the bill. Leaving those two lines out avoids creating potential ambiguities. I'd be glad to talk with Jen if you or she so desires.

I apologize for the lengthy e-mail, but wanted you to have time to consider our latest efforts. This timeline a big deal to ACLI, George, and we'd like to find a workable and reasonable compromise. As I stated above, just call or e-mail if you'd like to discuss. I'd also be glad to meet in person tomorrow if that's your preference.

Best,
Levi

Levi D. Andrist | Attorney

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "six months"

Page 2, line 17, after the first "the" insert "potential"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

- a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;
- c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and
- d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "six months"

Page 3, line 29, replace "8." with "9."

Page 3, line 29, replace "7" with "8"

Page 4, after line 2 insert:

"Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

Page 4, line 7, after the second underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 11, overstrike "Funds" and insert immediately thereafter "Except as otherwise provided under this section, funds"

Page 4, line 16, after "is" insert "a policy"

Page 4, line 25, after the first "the" insert "insurance"

Page 4, line 26, after "died" insert ", in which case the company shall comply with subsection 6"

Page 5, line 21, overstrike "and the beneficiary has not communicated with the insurer"

Page 5, line 22, after "four" insert "six"

Page 5, line 22, remove the overstrike over "~~months~~"

Page 5, line 22, remove "ninety days"

Page 5, remove line 26

Page 6, line 3, replace the underscored period with "; and

- c. Report and deliver the unclaimed property to the administrator as abandoned property if the benefits are due in accordance with the applicable insurance policy or annuity contract and the beneficiary has not submitted a claim with the insurer."

Renumber accordingly

③ 4-10-2013
HB 1171

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1171

Introduced by

Representatives Keiser, Kasper

Senators Klein, O'Connell

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century
2 Code, relating to unclaimed life insurance benefits; and to amend and reenact section
3 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Contract" means an annuity contract issued in this state. The term does not include
10 an annuity used to fund an employment-based retirement plan or program in which the
11 insurer is not committed by terms of the annuity contract to pay death benefits to the
12 beneficiaries of specific plan participants.
- 13 2. "Death master file" means the United States social security administration's death
14 master file or any other database or service the commissioner has determined is at
15 least as comprehensive as the United States social security administration's death
16 master file for determining that an individual has reportedly died.
- 17 3. "Death master file match" means a search of the death master file or revised death
18 master file which results in a match of the social security number or of the name and
19 date of birth of an insured, annuity owner, or retained asset accountholder.
- 20 4. "Policy" means any policy or certificate of life insurance issued in this state which
21 provides a death benefit. The term does not include:
 - 22 a. A policy or certificate of life insurance which provides a death benefit under an
23 employee benefit plan subject to the federal Employee Retirement Income
24 Security Act of 1974 [Pub. L. 93-406; 29 U.S.C. 1002 et seq.];

- 1 b. A policy or certificate of life insurance which provides a death benefit under an
2 employee benefit plan under any federal employee benefit program;
3 c. A policy or certificate of life insurance which is used to fund a preneed funeral
4 contract or prearrangement; or
5 d. A policy or certificate of credit life or accidental death insurance.
6 5. "Revised death master file" means the names added to the death master file since the
7 insurer's most recent semiannual comparison required under this chapter.

8 **Insurer conduct.**

- 9 1. ~~Within ninety days of the effective date of this Act~~Before November 1, 2014, an insurer
10 shall perform a comparison of the insurer's insureds' in-force life insurance policies
11 and retained asset accounts against a death master file in order to identify potential
12 matches of the insurer's insureds. Semiannually, an insurer shall perform a
13 comparison of the insurer's insureds' in-force life insurance policies and retained asset
14 accounts against the revised death master file in order to identify the potential
15 matches of the insurer's insureds.
16 2. For each potential match identified as a result of a death master file or revised death
17 master file match, within ~~ninety days~~six months of the potential match, the insurer
18 shall:
19 a. Complete a good-faith effort, which the insurer shall document, to confirm the
20 death of the insured or retained asset accountholder against other available
21 records and information; and
22 b. Review the insurer's records to determine whether the individual who has died
23 purchased any other products with the insurer; and
24 c. Determine whether benefits are due in accordance with the applicable policy or
25 contract, and if benefits are due in accordance with the applicable policy or
26 contract the insurer shall:
27 (1) Use good-faith efforts, which the insurer shall document, to locate the
28 beneficiary or beneficiaries; and
29 (2) Provide the appropriate claims forms or instructions to the beneficiary or
30 beneficiaries to make a claim, including the need to provide an official death
31 certificate, if applicable under the policy or contract.

- 1 3. With respect to group life insurance, for each potential match identified as a result of a
2 death master file or revised death master file match, the insurer shall confirm the
3 possible death of an insured if the insurer maintains at least the following information
4 of those covered under a policy or certificate:
- 5 a. The social security number or the name and date of birth;
6 b. Beneficiary designation information;
7 c. Coverage eligibility;
8 d. Benefit amount; and
9 e. Premium payment status.
- 10 4. Every insurer shall implement procedures to account for:
- 11 a. Nicknames, initials used in lieu of a first or middle name, use of a middle name,
12 compound first and middle names, and interchanged first and middle names;
13 b. Compound last names, maiden or married names, and hyphens, blank spaces,
14 and apostrophes in last names;
15 c. Incomplete date of birth data and transposition of the month and date portions of
16 a date of birth; and
17 d. Incomplete social security numbers.
- 18 5. To the extent permitted by law, for each potential match identified as a result of a
19 death master file or revised death master file match, the insurer may disclose
20 minimum necessary personal information about the insured or beneficiary to:
- 21 a. A person the insurer reasonably believes may be able to assist the insurer locate
22 the beneficiary; or
23 b. A person otherwise entitled to payment of the claims proceeds.
- 24 5.6. An insurer or an insurer's service provider may not charge an insured, accountholder,
25 or beneficiary for any fees or costs associated with a comparison, search, or
26 verification conducted pursuant to this section.
- 27 6.7. The benefits from a life insurance policy or a retained asset account, plus any
28 applicable accrued interest must be first payable to the designated beneficiaries or
29 owners and if the beneficiaries or owners cannot be found, escheat to the state as
30 unclaimed property under chapter 47-30.1.

1 ~~7.8.~~ Within one hundred twenty days six months following a potential match identified as a
2 result of a death master file or revised death master file match, an insurer shall notify
3 the state abandoned property office that:

4 a. A life insurance policy beneficiary or retained asset accountholder has not
5 submitted a claim with the insurer; and

6 b. The insurer has complied with subsections 2 and 3 and has been unable, after
7 good-faith efforts documented by the insurer, to contact the retained asset
8 accountholder, beneficiary, or beneficiaries.

9 ~~8.9.~~ Upon providing notice under subsection 7.8, an insurer immediately shall submit the
10 unclaimed life insurance benefits or unclaimed retained asset accounts, plus any
11 applicable accrued interest, to the state abandoned property office as provided under
12 chapter 47-30.1.

13 **Rulemaking.**

14 The commissioner may adopt rules to limit an insurer's death master file comparisons and
15 revised death master file comparisons required under this chapter to the insurer's electronic
16 searchable files, to allow the commissioner to approve an insurer's plan and timeline for
17 conversion of the insurer's files to electronic searchable files, and to allow for phasing-in
18 compliance with this chapter according to an insurer's plan and timeline approved by the
19 commissioner.

20 **Application.**

21 Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract
22 or policy to the extent the laws do not conflict with this chapter.

23 **Unfair trade practices - Liability limitation.**

24 Failure to meet any requirement of this chapter is a violation of chapter 26.1-04. This
25 chapter does not create a private cause of action for violation of this chapter. Once an insurer
26 submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any
27 applicable accrued interests, to the state abandoned property office in compliance with this
28 chapter, the insurer is relieved and indemnified from additional liability to any person relating to
29 the proceeds submitted. This indemnification from liability is in addition to any other protections
30 provided by law.

1 **SECTION 2. AMENDMENT.** Section 47-30.1-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **47-30.1-07. Funds owing under life insurance policies.**

- 4 1. ~~Funds~~Except as otherwise provided under this section, funds held or owing under any
5 life or endowment insurance policy or annuity contract that has matured or terminated
6 are presumed abandoned if unclaimed for more than three years after the funds
7 became due and payable as established from the records of the insurance company
8 holding or owing the funds, but property described in subdivision b of subsection 3 is
9 presumed abandoned if unclaimed for more than three years. If the policy or annuity
10 contract provides for death benefits and is a policy covered under section 1 of this Act,
11 the insurance company shall comply with section 1 of this Act.
- 12 2. If a person other than the insured or annuitant is entitled to the funds and an address
13 of the person is not known to the company or it is not definite and certain from the
14 records of the company who is entitled to the funds, it is presumed that the last known
15 address of the person entitled to the funds is the same as the last known address of
16 the insured or annuitant according to the records of the company.
- 17 3. For purposes of this chapter, a life or endowment insurance policy or annuity contract
18 not matured by actual proof of the death of the insured or annuitant according to the
19 records of the insurance company is matured and the proceeds due and payable if:
- 20 a. The company knows that the insured or annuitant has died, in which case the
21 company shall comply with subsection 6; or
- 22 b. (1) The insured has attained, or would have attained if the insured were living,
23 the limiting age under the mortality table on which the reserve is based;
- 24 (2) The policy was in force at the time the insured attained, or would have
25 attained, the limiting age specified in paragraph 1; and
- 26 (3) Neither the insured nor any other person appearing to have an interest in
27 the policy within the preceding three years, according to the records of the
28 company, has assigned, readjusted, or paid premiums on the policy,
29 subjected the policy to a loan, corresponded in writing with the company
30 concerning the policy, or otherwise indicated an interest as evidenced by a

1 memorandum or other record on file prepared by an employee of the
2 company.

- 3 4. For purposes of this chapter, the application of an automatic premium loan provision or
4 other nonforfeiture provision contained in an insurance policy does not prevent a
5 policy from being matured or terminated under subsection 1 if the insured has died or
6 the insured or the beneficiary of the policy otherwise has become entitled to the
7 proceeds thereof before the depletion of the cash surrender value of a policy by the
8 application of those provisions.
- 9 5. If the laws of this state or the terms of the life insurance policy require the company to
10 give notice to the insured or owner that an automatic premium loan provision or other
11 nonforfeiture provision has been exercised, and the notice, given to an insured or
12 owner whose last known address according to the records of the company is in this
13 state, is undeliverable, the company shall make a reasonable search to ascertain the
14 policyholder's correct address to which the notice must be mailed.
- 15 6. Notwithstanding any other provision of law, if the company learns of the death of the
16 insured or annuitant ~~and the beneficiary has not communicated with the insurer,~~ within
17 ~~four~~six months ~~after ninety days~~ following the company learning of the death, the
18 company shall ~~take reasonable steps to pay the proceeds to the beneficiary:~~
19 a. Complete a good-faith effort, which the company shall document, to confirm the
20 death of the insured or annuitant against other available records and information;
21 and
22 b. Determine whether benefits are due in accordance with the applicable insurance
23 policy or annuity contract, and if benefits are due in accordance with the
24 applicable policy or contract the company shall:
25 (1) Use good-faith efforts, which the company shall document, to locate the
26 beneficiary or beneficiaries; and
27 (2) Provide the appropriate claims forms or instructions to the beneficiary or
28 beneficiaries to make a claim, including the need to provide an official death
29 certificate, if applicable under the policy or contract; and

- 1 c. Report and deliver the unclaimed property to the administrator as abandoned
2 property if the benefits are due in accordance with the applicable insurance policy
3 or annuity contract and the beneficiary has not submitted a claim with the insurer.
- 4 7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form
5 issued by an insurance company under any life or endowment insurance policy or
6 annuity contract to an insured or owner who is a resident of this state must request the
7 following information:
- 8 a. The name of each beneficiary, or if a class of beneficiaries is named, the name of
9 each current beneficiary in the class;
- 10 b. The address of each beneficiary; and
- 11 c. The relationship of each beneficiary to the insured.

April 16, 2013

(4) 4-10-2013
HB 1171

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "four months"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;

c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and

d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "one year"

Page 3, line 29, replace "8." with "9."

Page 3, line 29, replace "7" with "8"

Page 4, after line 2, insert:

"Rulemaking."

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "**practices**" insert "**- Liability limitation**"

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 16, remove "If the policy or annuity contract provides for death benefits and is covered under"

Page 4, remove line 17

Page 5, line 21, remove the underscored comma

Page 5, line 22, remove the overstrike over "~~four months after~~"

Page 5, line 22, remove "ninety days following the company learning of"

Renumber accordingly

April 16, 2013

① 4-17-2013
HB 1171

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "twelve months"

Page 2, line 17, after the first "the" insert "potential"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;

c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and

d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "twelve months"

Page 3, line 23, after "office" insert "pursuant to chapter 47-30.1"

Page 3, line 29, replace "8." with "9."

Page 3, line 29, replace "Upon" with "Within thirty day of"

Page 3, line 29, replace "7" with "8"

Page 3, line 29, remove "immediately"

Page 4, after line 2 insert:

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "practices" insert "- Liability limitation"

Page 4, line 7, after the second underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 11, overstrike "Funds" and insert immediately thereafter "Except as otherwise provided under this section, funds"

Page 4, line 16, after "is" insert "a policy"

Page 4, line 25, after the first "the" insert "insurance"

Page 4, line 26, after "died" insert ", in which case the company shall comply with subsection 6"

Page 5, line 21, overstrike "and the beneficiary has not communicated with the insurer"

Page 5, line 22, after "~~four~~" insert "twelve"

Page 5, line 22, remove the overstrike over "~~months~~"

Page 5, line 22, remove "ninety days"

Renumber accordingly

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1171

Introduced by

Representatives Keiser, Kasper

Senators Klein, O'Connell

(2) 4-17-2013
HB 1171

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century
2 Code, relating to unclaimed life insurance benefits; and to amend and reenact section
3 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Contract" means an annuity contract issued in this state. The term does not include
10 an annuity used to fund an employment-based retirement plan or program in which the
11 insurer is not committed by terms of the annuity contract to pay death benefits to the
12 beneficiaries of specific plan participants.
- 13 2. "Death master file" means the United States social security administration's death
14 master file or any other database or service the commissioner has determined is at
15 least as comprehensive as the United States social security administration's death
16 master file for determining that an individual has reportedly died.
- 17 3. "Death master file match" means a search of the death master file or revised death
18 master file which results in a match of the social security number or of the name and
19 date of birth of an insured, annuity owner, or retained asset accountholder.
- 20 4. "Policy" means any policy or certificate of life insurance issued in this state which
21 provides a death benefit. The term does not include:
- 22 a. A policy or certificate of life insurance which provides a death benefit under an
23 employee benefit plan subject to the federal Employee Retirement Income
24 Security Act of 1974 [Pub. L. 93-406; 29 U.S.C. 1002 et seq.];

- 1 b. A policy or certificate of life insurance which provides a death benefit under an
2 employee benefit plan under any federal employee benefit program;
3 c. A policy or certificate of life insurance which is used to fund a preneed funeral
4 contract or prearrangement; or
5 d. A policy or certificate of credit life or accidental death insurance.
6 5. "Revised death master file" means the names added to the death master file since the
7 insurer's most recent semiannual comparison required under this chapter.

8 **Insurer conduct.**

- 9 1. ~~Within ninety days of the effective date of this Act~~Before November 1, 2014, an insurer
10 shall perform a comparison of the insurer's insureds' in-force life insurance policies
11 and retained asset accounts against a death master file in order to identify potential
12 matches of the insurer's insureds. Semiannually, an insurer shall perform a
13 comparison of the insurer's insureds' in-force life insurance policies and retained asset
14 accounts against the revised death master file in order to identify the potential
15 matches of the insurer's insureds.
16 2. For each potential match identified as a result of a death master file or revised death
17 master file match, within ~~ninety days~~twelve months of the potential match, the insurer
18 shall:
19 a. Complete a good-faith effort, which the insurer shall document, to confirm the
20 death of the insured or retained asset accountholder against other available
21 records and information; and
22 b. Review the insurer's records to determine whether the individual who has died
23 purchased any other products with the insurer; and
24 c. Determine whether benefits are due in accordance with the applicable policy or
25 contract, and if benefits are due in accordance with the applicable policy or
26 contract the insurer shall:
27 (1) Use good-faith efforts, which the insurer shall document, to locate the
28 beneficiary or beneficiaries; and
29 (2) Provide the appropriate claims forms or instructions to the beneficiary or
30 beneficiaries to make a claim, including the need to provide an official death
31 certificate, if applicable under the policy or contract.

- 1 3. With respect to group life insurance, for each potential match identified as a result of a
2 death master file or revised death master file match, the insurer shall confirm the
3 possible death of an insured if the insurer maintains at least the following information
4 of those covered under a policy or certificate:
- 5 a. The social security number or the name and date of birth;
 - 6 b. Beneficiary designation information;
 - 7 c. Coverage eligibility;
 - 8 d. Benefit amount; and
 - 9 e. Premium payment status.
- 10 4. Every insurer shall implement procedures to account for:
- 11 a. Nicknames, initials used in lieu of a first or middle name, use of a middle name,
12 compound first and middle names, and interchanged first and middle names;
 - 13 b. Compound last names, maiden or married names, and hyphens, blank spaces,
14 and apostrophes in last names;
 - 15 c. Incomplete date of birth data and transposition of the month and date portions of
16 a date of birth; and
 - 17 d. Incomplete social security numbers.
- 18 5. To the extent permitted by law, for each potential match identified as a result of a
19 death master file or revised death master file match, the insurer may disclose
20 minimum necessary personal information about the insured or beneficiary to:
- 21 a. A person the insurer reasonably believes may be able to assist the insurer locate
22 the beneficiary; or
 - 23 b. A person otherwise entitled to payment of the claims proceeds.
- 24 ~~5.6.~~ An insurer or an insurer's service provider may not charge an insured, accountholder,
25 or beneficiary for any fees or costs associated with a comparison, search, or
26 verification conducted pursuant to this section.
- 27 ~~6.7.~~ The benefits from a life insurance policy or a retained asset account, plus any
28 applicable accrued interest must be first payable to the designated beneficiaries or
29 owners and if the beneficiaries or owners cannot be found, escheat to the state as
30 unclaimed property under chapter 47-30.1.

1 7-8. Within ~~one hundred twenty days~~ twelve months following a potential match identified
2 as a result of a death master file or revised death master file match, an insurer shall
3 notify the state abandoned property office pursuant to chapter 47-30.1 that:

4 a. A life insurance policy beneficiary or retained asset accountholder has not
5 submitted a claim with the insurer; and

6 b. The insurer has complied with subsections 2 and 3 and has been unable, after
7 good-faith efforts documented by the insurer, to contact the retained asset
8 accountholder, beneficiary, or beneficiaries.

9 ~~8-9. Upon~~ Within thirty days of providing notice under subsection 78, an insurer immediately
10 shall submit the unclaimed life insurance benefits or unclaimed retained asset
11 accounts, plus any applicable accrued interest, to the state abandoned property office
12 as provided under chapter 47-30.1.

13 **Rulemaking.**

14 The commissioner may adopt rules to limit an insurer's death master file comparisons and
15 revised death master file comparisons required under this chapter to the insurer's electronic
16 searchable files, to allow the commissioner to approve an insurer's plan and timeline for
17 conversion of the insurer's files to electronic searchable files, and to allow for phasing-in
18 compliance with this chapter according to an insurer's plan and timeline approved by the
19 commissioner.

20 **Application.**

21 Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract
22 or policy to the extent the laws do not conflict with this chapter.

23 **Unfair trade practices - Liability limitation.**

24 Failure to meet any requirement of this chapter is a violation of chapter 26.1-04. This
25 chapter does not create a private cause of action for violation of this chapter. Once an insurer
26 submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any
27 applicable accrued interests, to the state abandoned property office in compliance with this
28 chapter, the insurer is relieved and indemnified from additional liability to any person relating to
29 the proceeds submitted. This indemnification from liability is in addition to any other protections
30 provided by law.

1 **SECTION 2. AMENDMENT.** Section 47-30.1-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **47-30.1-07. Funds owing under life insurance policies.**

- 4 1. ~~Funds~~Except as otherwise provided under this section, funds held or owing under any
5 life or endowment insurance policy or annuity contract that has matured or terminated
6 are presumed abandoned if unclaimed for more than three years after the funds
7 became due and payable as established from the records of the insurance company
8 holding or owing the funds, but property described in subdivision b of subsection 3 is
9 presumed abandoned if unclaimed for more than three years. If the policy or annuity
10 contract provides for death benefits and is a policy covered under section 1 of this Act,
11 the insurance company shall comply with section 1 of this Act.
- 12 2. If a person other than the insured or annuitant is entitled to the funds and an address
13 of the person is not known to the company or it is not definite and certain from the
14 records of the company who is entitled to the funds, it is presumed that the last known
15 address of the person entitled to the funds is the same as the last known address of
16 the insured or annuitant according to the records of the company.
- 17 3. For purposes of this chapter, a life or endowment insurance policy or annuity contract
18 not matured by actual proof of the death of the insured or annuitant according to the
19 records of the insurance company is matured and the proceeds due and payable if:
- 20 a. The company knows that the insured or annuitant has died, in which case the
21 company shall comply with subsection 6; or
- 22 b. (1) The insured has attained, or would have attained if the insured were living,
23 the limiting age under the mortality table on which the reserve is based;
- 24 (2) The policy was in force at the time the insured attained, or would have
25 attained, the limiting age specified in paragraph 1; and
- 26 (3) Neither the insured nor any other person appearing to have an interest in
27 the policy within the preceding three years, according to the records of the
28 company, has assigned, readjusted, or paid premiums on the policy,
29 subjected the policy to a loan, corresponded in writing with the company
30 concerning the policy, or otherwise indicated an interest as evidenced by a

1 memorandum or other record on file prepared by an employee of the
2 company.

3 4. For purposes of this chapter, the application of an automatic premium loan provision
4 or other nonforfeiture provision contained in an insurance policy does not prevent a
5 policy from being matured or terminated under subsection 1 if the insured has died or
6 the insured or the beneficiary of the policy otherwise has become entitled to the
7 proceeds thereof before the depletion of the cash surrender value of a policy by the
8 application of those provisions.

9 5. If the laws of this state or the terms of the life insurance policy require the company to
10 give notice to the insured or owner that an automatic premium loan provision or other
11 nonforfeiture provision has been exercised and the notice, given to an insured or
12 owner whose last known address according to the records of the company is in this
13 state, is undeliverable, the company shall make a reasonable search to ascertain the
14 policyholder's correct address to which the notice must be mailed.

15 6. Notwithstanding any other provision of law, if the company learns of the death of the
16 insured or annuitant ~~and the beneficiary has not communicated with the insurer,~~ within
17 ~~four~~twelve months ~~after ninety days~~ following the company learning of the death, the
18 company shall take reasonable steps to pay the proceeds to the beneficiary:

19 a. Complete a good-faith effort, which the company shall document, to confirm the
20 death of the insured or annuitant against other available records and information;

21 and

22 b. Determine whether benefits are due in accordance with the applicable insurance
23 policy or annuity contract, and if benefits are due in accordance with the

24 applicable policy or contract the company shall:

25 (1) Use good-faith efforts, which the company shall document, to locate the
26 beneficiary or beneficiaries; and

27 (2) Provide the appropriate claims forms or instructions to the beneficiary or
28 beneficiaries to make a claim, including the need to provide an official death
29 certificate, if applicable under the policy or contract.

30 7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form
31 issued by an insurance company under any life or endowment insurance policy or

- 1 annuity contract to an insured or owner who is a resident of this state must request the
- 2 following information:
- 3 a. The name of each beneficiary, or if a class of beneficiaries is named, the name of
- 4 each current beneficiary in the class;
- 5 b. The address of each beneficiary; and
- 6 c. The relationship of each beneficiary to the insured.

April 17, 2013

① 4-18-2013
MB 1171

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1171

That the Senate recede from its amendments as printed on pages 1225 and 1226 of the House Journal and pages 968 and 969 of the Senate Journal and that Engrossed House Bill No. 1171 be amended as follows:

Page 1, line 9, after "contract" insert "issued in this state"

Page 1, line 20, after "insurance" insert "issued in this state"

Page 2, line 9, replace "Within ninety days of the effective date of this Act" with "Before November 1, 2014"

Page 2, line 17, replace "ninety days" with "twelve months"

Page 2, line 17, after the first "the" insert "potential"

Page 2, line 20, remove the second "and"

Page 2, line 21, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer; and

c."

Page 3, line 8, after "4." insert "Every insurer shall implement procedures to account for:

a. Nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

b. Compound last names, maiden or married names, and hyphens, blank spaces, and apostrophes in last names;

c. Incomplete date of birth data and transposition of the month and date portions of a date of birth; and

d. Incomplete social security numbers.

5."

Page 3, line 14, replace "5." with "6."

Page 3, line 17, replace "6." with "7."

Page 3, line 20, replace "under chapter 47-30.1" with "as provided under this chapter"

Page 3, line 21, replace "7." with "8."

Page 3, line 21, replace "one hundred twenty days" with "twelve months"

Page 3, line 22, replace "notify" with ":

a. Notify"

Page 3, line 23, remove the underscored colon

Page 3, line 24, replace "a. A" with "a"

Page 3, line 25, after "submitted" insert "and completed"

Page 3, line 25, remove the underscored semicolon

Page 3, line 26, replace "b. The" with "that the"

Page 3, line 28, replace the underscored period with "and unable to complete the necessary payment; and"

Page 3, line 29, replace "g." with "b."

Page 3, line 29, replace "Upon providing notice under subsection 7, an insurer immediately shall submit the" with "Submit any"

Page 4, line 1, remove "as provided"

Page 4, after line 2, insert:

"9. Except as otherwise provided under this chapter, chapter 47-30.1 applies to the escheatment of unclaimed life insurance benefits or unclaimed retained asset accounts.

Rulemaking.

The commissioner may adopt rules to limit an insurer's death master file comparisons and revised death master file comparisons required under this chapter to the insurer's electronic searchable files, to allow the commissioner to approve an insurer's plan and timeline for conversion of the insurer's files to electronic searchable files, and to allow for phasing-in compliance with this chapter according to an insurer's plan and timeline approved by the commissioner."

Page 4, line 6, after "practices" insert "- Liability limitation"

Page 4, line 7, after the underscored period insert "This chapter does not create a private cause of action for violation of this chapter. Once an insurer submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any applicable accrued interests, to the state abandoned property office in compliance with this chapter, the insurer is relieved and indemnified from additional liability to any person relating to the proceeds submitted. This indemnification from liability is in addition to any other protections provided by law."

Page 4, line 11, overstrike "Funds" and insert immediately thereafter "Except as otherwise provided under this section, funds"

Page 4, line 12, overstrike "more than"

Page 4, line 13, overstrike "three years" and insert immediately thereafter "one year"

Page 4, line 14, overstrike ", but property described in"

Page 4, overstrike line 15

Page 4, line 16, overstrike "years"

Page 4, line 16, after "is" insert "a policy"

Page 4, line 25, after the first "the" insert "insurance"

Page 4, line 26, overstrike "that" and insert immediately thereafter "of the potential death of"

Page 4, line 26, overstrike "has died" and insert immediately thereafter ", in which case the company shall comply with subsection 6"

Page 5, line 20, overstrike "Notwithstanding any other provision of law, if" and insert immediately thereafter "if"

Page 5, line 20, after the second "the" insert "death or potential"

Page 5, line 21, overstrike "and the beneficiary has not communicated with the insurer"

Page 5, line 22, after "~~four~~" insert "twelve"

Page 5, line 22, remove the overstrike over "~~months~~"

Page 5, line 22, remove "ninety days"

Page 5, line 22, after the second "the" insert "death or potential"

Page 5, remove line 26

Page 5, line 27, after "b." insert "Review the insurer's records to determine whether the individual who has died purchased any other products with the insurer;

c."

Page 6, line 3, replace the underscored period with "; and

d. Report and deliver the unclaimed property to the administrator as abandoned property if the benefits are due in accordance with the applicable insurance policy or annuity contract and the beneficiary has not submitted and completed a claim with the insurer."

Renumber accordingly

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1171

② 4-18-2013
HB 1171

Introduced by

Representatives Keiser, Kasper

Senators Klein, O'Connell

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century
2 Code, relating to unclaimed life insurance benefits; and to amend and reenact section
3 47-30.1-07 of the North Dakota Century Code, relating to the state's unclaimed property act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and
6 enacted as follows:

7 **Definitions.**

8 As used in this chapter:

- 9 1. "Contract" means an annuity contract issued in this state. The term does not include
10 an annuity used to fund an employment-based retirement plan or program in which the
11 insurer is not committed by terms of the annuity contract to pay death benefits to the
12 beneficiaries of specific plan participants.
- 13 2. "Death master file" means the United States social security administration's death
14 master file or any other database or service the commissioner has determined is at
15 least as comprehensive as the United States social security administration's death
16 master file for determining that an individual has reportedly died.
- 17 3. "Death master file match" means a search of the death master file or revised death
18 master file which results in a match of the social security number or of the name and
19 date of birth of an insured, annuity owner, or retained asset accountholder.
- 20 4. "Policy" means any policy or certificate of life insurance issued in this state which
21 provides a death benefit. The term does not include:
 - 22 a. A policy or certificate of life insurance which provides a death benefit under an
23 employee benefit plan subject to the federal Employee Retirement Income
24 Security Act of 1974 [Pub. L. 93-406; 29 U.S.C. 1002 et seq.];

- 1 b. A policy or certificate of life insurance which provides a death benefit under an
2 employee benefit plan under any federal employee benefit program;
3 c. A policy or certificate of life insurance which is used to fund a preneed funeral
4 contract or prearrangement; or
5 d. A policy or certificate of credit life or accidental death insurance.
6 5. "Revised death master file" means the names added to the death master file since the
7 insurer's most recent semiannual comparison required under this chapter.

8 **Insurer conduct.**

- 9 1. ~~Within ninety days of the effective date of this Act~~Before November 1, 2014, an insurer
10 shall perform a comparison of the insurer's insureds' in-force life insurance policies
11 and retained asset accounts against a death master file in order to identify potential
12 matches of the insurer's insureds. Semiannually, an insurer shall perform a
13 comparison of the insurer's insureds' in-force life insurance policies and retained asset
14 accounts against the revised death master file in order to identify the potential
15 matches of the insurer's insureds.
16 2. For each potential match identified as a result of a death master file or revised death
17 master file match, within ~~ninety days~~twelve months of the potential match, the insurer
18 shall:
19 a. Complete a good-faith effort, which the insurer shall document, to confirm the
20 death of the insured or retained asset accountholder against other available
21 records and information; ~~and~~
22 b. Review the insurer's records to determine whether the individual who has died
23 purchased any other products with the insurer; and
24 c. Determine whether benefits are due in accordance with the applicable policy or
25 contract, and if benefits are due in accordance with the applicable policy or
26 contract the insurer shall:
27 (1) Use good-faith efforts, which the insurer shall document, to locate the
28 beneficiary or beneficiaries; and
29 (2) Provide the appropriate claims forms or instructions to the beneficiary or
30 beneficiaries to make a claim, including the need to provide an official death
31 certificate, if applicable under the policy or contract.

- 1 3. With respect to group life insurance, for each potential match identified as a result of a
2 death master file or revised death master file match, the insurer shall confirm the
3 possible death of an insured if the insurer maintains at least the following information
4 of those covered under a policy or certificate:
- 5 a. The social security number or the name and date of birth;
6 b. Beneficiary designation information;
7 c. Coverage eligibility;
8 d. Benefit amount; and
9 e. Premium payment status.
- 10 4. Every insurer shall implement procedures to account for:
- 11 a. Nicknames, initials used in lieu of a first or middle name, use of a middle name,
12 compound first and middle names, and interchanged first and middle names;
13 b. Compound last names, maiden or married names, and hyphens, blank spaces,
14 and apostrophes in last names;
15 c. Incomplete date of birth data and transposition of the month and date portions of
16 a date of birth; and
17 d. Incomplete social security numbers.
- 18 5. To the extent permitted by law, for each potential match identified as a result of a
19 death master file or revised death master file match, the insurer may disclose
20 minimum necessary personal information about the insured or beneficiary to:
- 21 a. A person the insurer reasonably believes may be able to assist the insurer locate
22 the beneficiary; or
23 b. A person otherwise entitled to payment of the claims proceeds.
- 24 ~~5-6.~~ An insurer or an insurer's service provider may not charge an insured, accountholder,
25 or beneficiary for any fees or costs associated with a comparison, search, or
26 verification conducted pursuant to this section.
- 27 ~~6-7.~~ The benefits from a life insurance policy or a retained asset account, plus any
28 applicable accrued interest must be first payable to the designated beneficiaries or
29 owners and if the beneficiaries or owners cannot be found, escheat to the state as
30 unclaimed property under chapter 47-30.1 as provided under this chapter.

1 ~~7.8.~~ Within one hundred twenty days ~~twelve months following a potential match identified as~~
2 a result of a death master file or revised death master file match, an insurer shall
3 notify:

4 ~~a.~~ Notify the state abandoned property office that:

5 ~~a.~~ A a life insurance policy beneficiary or retained asset accountholder has not
6 submitted and completed a claim with the insurer; and

7 ~~b.~~ The that the insurer has complied with subsections 2 and 3 and has been unable,
8 after good-faith efforts documented by the insurer, to contact the retained asset
9 accountholder, beneficiary, or beneficiaries; and unable to complete the
10 necessary payment; and

11 ~~8.b.~~ Upon providing notice under subsection 7, an insurer immediately shall submit
12 the Submit any unclaimed life insurance benefits or unclaimed retained asset
13 accounts, plus any applicable accrued interest, to the state abandoned property
14 office as provided under chapter 47-30.1.

15 9. Except as otherwise provided under this chapter, chapter 47-30.1 applies to the
16 escheatment of unclaimed life insurance benefits or unclaimed retained asset
17 accounts.

18 **Rulemaking.**

19 The commissioner may adopt rules to limit an insurer's death master file comparisons and
20 revised death master file comparisons required under this chapter to the insurer's electronic
21 searchable files, to allow the commissioner to approve an insurer's plan and timeline for
22 conversion of the insurer's files to electronic searchable files, and to allow for phasing-in
23 compliance with this chapter according to an insurer's plan and timeline approved by the
24 commissioner.

25 **Application.**

26 Section 47-30.1-07 and chapter 47-30.1, relating to unclaimed property, apply to a contract
27 or policy to the extent the laws do not conflict with this chapter.

28 **Unfair trade practices - Liability limitation.**

29 Failure to meet any requirement of this chapter is a violation of chapter 26.1-04. This
30 chapter does not create a private cause of action for violation of this chapter. Once an insurer
31 submits unclaimed life insurance benefits or unclaimed retained asset accounts, plus any

1 applicable accrued interests, to the state abandoned property office in compliance with this
2 chapter, the insurer is relieved and indemnified from additional liability to any person relating to
3 the proceeds submitted. This indemnification from liability is in addition to any other protections
4 provided by law.

5 **SECTION 2. AMENDMENT.** Section 47-30.1-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **47-30.1-07. Funds owing under life insurance policies.**

- 8 1. ~~Funds~~Except as otherwise provided under this section, funds held or owing under any
9 life or endowment insurance policy or annuity contract that has matured or terminated
10 are presumed abandoned if unclaimed for ~~more than three years~~one year after the
11 funds became due and payable as established from the records of the insurance
12 company holding or owing the funds, ~~but property described in subdivision b of~~
13 ~~subsection 3 is presumed abandoned if unclaimed for more than three years. If the~~
14 policy or annuity contract provides for death benefits and is a policy covered under
15 section 1 of this Act, the insurance company shall comply with section 1 of this Act.
- 16 2. If a person other than the insured or annuitant is entitled to the funds and an address
17 of the person is not known to the company or it is not definite and certain from the
18 records of the company who is entitled to the funds, it is presumed that the last known
19 address of the person entitled to the funds is the same as the last known address of
20 the insured or annuitant according to the records of the company.
- 21 3. For purposes of this chapter, a life or endowment insurance policy or annuity contract
22 not matured by actual proof of the death of the insured or annuitant according to the
23 records of the insurance company is matured and the proceeds due and payable if:
- 24 a. The company knows ~~that~~of the potential death of the insured or annuitant ~~has~~
25 ~~died, in which case the company shall comply with subsection 6;~~ or
- 26 b. (1) The insured has attained, or would have attained if the insured were living,
27 the limiting age under the mortality table on which the reserve is based;
- 28 (2) The policy was in force at the time the insured attained, or would have
29 attained, the limiting age specified in paragraph 1; and
- 30 (3) Neither the insured nor any other person appearing to have an interest in
31 the policy within the preceding three years, according to the records of the

1 company, has assigned, readjusted, or paid premiums on the policy,
2 subjected the policy to a loan, corresponded in writing with the company
3 concerning the policy, or otherwise indicated an interest as evidenced by a
4 memorandum or other record on file prepared by an employee of the
5 company.

6 4. For purposes of this chapter, the application of an automatic premium loan provision or
7 other nonforfeiture provision contained in an insurance policy does not prevent a
8 policy from being matured or terminated under subsection 1 if the insured has died or
9 the insured or the beneficiary of the policy otherwise has become entitled to the
10 proceeds thereof before the depletion of the cash surrender value of a policy by the
11 application of those provisions.

12 5. If the laws of this state or the terms of the life insurance policy require the company to
13 give notice to the insured or owner that an automatic premium loan provision or other
14 nonforfeiture provision has been exercised and the notice, given to an insured or
15 owner whose last known address according to the records of the company is in this
16 state, is undeliverable, the company shall make a reasonable search to ascertain the
17 policyholder's correct address to which the notice must be mailed.

18 6. ~~Notwithstanding any other provision of law, if~~ the company learns of the death or
19 potential death of the insured or annuitant ~~and the beneficiary has not communicated~~
20 ~~with the insurer, within four~~twelve months ~~after ninety days following the company~~
21 learning of the death or potential death, the company shall ~~take reasonable steps to~~
22 pay the proceeds to the beneficiary:

23 a. Complete a good-faith effort, which the company shall document, to confirm the
24 death of the insured or annuitant against other available records and information;
25 and

26 b. Review the insurer's records to determine whether the individual who has died
27 purchased any other products with the insurer;

28 c. Determine whether benefits are due in accordance with the applicable insurance
29 policy or annuity contract, and if benefits are due in accordance with the
30 applicable policy or contract the company shall:

- 1 (1) Use good-faith efforts, which the company shall document, to locate the
2 beneficiary or beneficiaries; and
- 3 (2) Provide the appropriate claims forms or instructions to the beneficiary or
4 beneficiaries to make a claim, including the need to provide an official death
5 certificate, if applicable under the policy or contract; and
- 6 d. Report and deliver the unclaimed property to the administrator as abandoned
7 property if the benefits are due in accordance with the applicable insurance policy
8 or annuity contract and the beneficiary has not submitted and completed a claim
9 with the insurer.
- 10 7. ~~Commencing two years after July 1, 1985, every~~Every change of beneficiary form
11 issued by an insurance company under any life or endowment insurance policy or
12 annuity contract to an insured or owner who is a resident of this state must request the
13 following information:
- 14 a. The name of each beneficiary, or if a class of beneficiaries is named, the name of
15 each current beneficiary in the class;
- 16 b. The address of each beneficiary; and
- 17 c. The relationship of each beneficiary to the insured.