

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 542
House Committee Substitute Favorable 6/22/21

Short Title: SHP Combat Fraud/Property Finders Stnds. (Public)

Sponsors:

Referred to:

April 6, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS
3 AND STATE EMPLOYEES TO ADOPT A PROGRAM TO INCENTIVIZE PLAN
4 MEMBERS TO REPORT ACTIVITIES SUCH AS FRAUD, WASTE, AND ABUSE BY
5 HEALTH CARE PROVIDERS PROVIDING SERVICES TO PLAN MEMBERS AND TO
6 ESTABLISH GOVERNING STANDARDS FOR PROPERTY FINDERS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 135-48.15 reads as rewritten:

9 "**§ 135-48.15. Whistle-blower protections related to the State Health Plan.**

10 (a) Statement of Public Policy. – It is the policy of this State that persons shall be
11 encouraged to report verbally or in writing to the State Health Plan, Attorney General, or other
12 appropriate authority evidence of activity related to the State Health Plan and involving the
13 following:

- 14 (1) A violation of State or federal law, rule, or regulation.
15 (2) Fraud.
16 (3) Misappropriation of State resources.
17 (4) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

18 Further, it is the policy of this State that persons shall be free of intimidation or harassment when
19 reporting matters of public concern related to the State Health Plan, including offering testimony
20 to or testifying before appropriate legislative panels.

21 (a1) Rules to Further Public Policy. – In accordance with G.S. 135-48.25, the State
22 Treasurer may adopt rules to assist in the identification and investigation of activities described
23 under subsection (a) of this section undertaken by a health care provider that provides services
24 to Plan members. If the Plan adopts a program to encourage its members to report these activities,
25 then the Plan is authorized to expend State funds in furtherance of the policy objectives of this
26 section and may adopt rules to offer an incentive to Plan members. The incentive offered shall
27 be five hundred dollars (\$500.00), or a maximum of two percent (2%) of any net recovery made
28 by the Plan resulting from the member report, whichever amount is less.

29"

30 **SECTION 2.(a)** G.S. 28A-4-2 reads as rewritten:

31 "**§ 28A-4-2. Persons disqualified to serve as personal representative.**

32 No person is qualified to serve as a personal representative who:

33 ...

- 34 (11) Is a person who is employed by, acts as an agent for, serves as legal counsel
35 for, or conducts business in any contractual capacity with a property finder, as



1 defined in G.S. 116B-52(11a), who has entered into an agreement subject to
 2 G.S. 116B-78 to locate the estate property defined by the agreement."

3 **SECTION 2.(b)** G.S. 28A-9-1 reads as rewritten:

4 **"§ 28A-9-1. Revocation after hearing.**

5 (a) Grounds. – Letters testamentary, letters of administration, or letters of collection may
 6 be revoked after hearing on any of the following grounds:

- 7 (1) The person to whom they were issued was originally disqualified under the
 8 provisions of G.S. 28A-4-2 or has become disqualified since the issuance of
 9 letters.
 10 (2) The issuance of letters was obtained by false representation or mistake.
 11 (3) The person to whom they were issued has violated a fiduciary duty through
 12 default or misconduct in the execution of the person's office, other than acts
 13 specified in G.S. 28A-9-2.
 14 (4) The person to whom they were issued has a private interest, whether direct or
 15 indirect, that might tend to hinder or be adverse to a fair and proper
 16 administration. The relationship upon which the appointment was predicated
 17 shall not, in and of itself, constitute such an interest.
 18 (5) The person to whom they were issued is employed by, acts as an agent for, or
 19 conducts business in a contractual capacity with a property finder, as defined
 20 in G.S. 116B-52(11a), who has entered into an agreement subject to
 21 G.S. 116B-78 to locate the estate property defined by the agreement.

22"

23 **SECTION 2.(c)** G.S. 28A-22-11 reads as rewritten:

24 **"§ 28A-22-11. Agreements with heirs.**

25 Any agreement by an heir, unknown or known but unlocated, the primary purpose of which
 26 is to locate or recover, or assist in the recovery of, a share in a decedent's estate shall be subject
 27 to the provisions of ~~G.S. 116B-78.~~ Article 4 of Chapter 116B of the General Statutes."

28 **SECTION 2.(d)** G.S. 116B-52 reads as rewritten:

29 **"§ 116B-52. Definitions.**

30 In this Chapter:

31 ...

- 32 (11a) "Property finder" means an individual or business entity, incorporated or
 33 otherwise, who, for fee or any other consideration, seeks to locate, deliver,
 34 recover, or assist in the recovery of property that is distributable to the owner
 35 or presumed abandoned.

36"

37 **SECTION 2.(e)** G.S. 116B-78 reads as rewritten:

38 **"§ 116B-78. Agreement to locate ~~property~~ property between property finders and owners**
 39 **or apparent owners.**

40 (a) Repealed by Session Laws 2009-312, s. 2, effective October 1, 2009, and applicable
 41 to agreements entered into on or after that date.

42 (a1) Agreements Covered. – An agreement by an owner is covered by this section if its
 43 primary purpose is to locate, deliver, recover, or assist in the recovery of property that is
 44 distributable to the owner or presumed abandoned.

45 (a2) Void Agreements. – An agreement covered by this section is void and unenforceable
 46 ~~if it~~ if either of the following situations applies:

- 47 (1) The agreement was entered into during the period commencing on the date
 48 the property was distributable to the owner and extending to a time that is 24
 49 months after the date the property is paid or delivered to the Treasurer. This
 50 ~~subsection~~ subdivision does not apply to an owner's agreement with an

1 attorney to file a claim or special proceeding as to identified property or
2 contest the Treasurer's denial of a claim or a clerk's denial of a petition.

3 (2) The agreement involves a property finder as defined in G.S. 116B-52(11a), or
4 any individual who acts as an agent for, serves as legal counsel for, or conducts
5 business in any contractual capacity with a property finder, and the individual
6 is also appointed as the personal representative of the owner or purported
7 owner's estate.

8 (b) Criteria for Agreements. – An agreement covered by this section is ~~enforceable only~~
9 ~~void and unenforceable~~ if it ~~meets~~ does not meet all of the following criteria:

10 (1) Is in writing and clearly sets forth the nature of the property and the services
11 to be rendered.

12 (2) Is signed by the owner, with signature notarized.

13 (3) Describes the property, which includes the type of property, the property ID
14 held by the State Treasurer, and the name of the holder.

15 (4) States that there may be other claims to the property that may reduce the share
16 of the owner.

17 (5) States the value of the property, to the extent known, before and after the fee
18 or other compensation has been deducted.

19 (6) States clearly the fees and costs for services. Total fees and costs shall be
20 limited as follows:

21 a. For an agreement covered by this section other than one covered by
22 G.S. 28A-22-11, total fees and costs shall not exceed one thousand
23 dollars (\$1,000) or twenty percent (20%) of the value of the property
24 recovered, whichever is less.

25 b. For an agreement subject to G.S. 28A-22-11 by an heir, unknown or
26 known but unlocated, the primary purpose of which is to locate or
27 recover, or assist in the recovery, of a share in a decedent's estate, or
28 surplus funds in a special proceeding, total fees and costs shall not
29 exceed twenty percent (20%) of the value of the property recovered.

30 (7) Discloses that the property is being held by the North Carolina Department of
31 State Treasurer's Unclaimed Property Program.

32 (8) Agreements with heirs, as defined in G.S. 28A-22-11, shall include a
33 certification that the personal representative is not a person who is employed
34 by, acts as an agent for, serves as legal counsel for, or conducts business in
35 any contractual capacity with a property finder, as defined by
36 G.S. 116B-52(11a), who has entered into an agreement to locate property
37 defined by the agreement.

38 (c) Mineral Proceeds. – If an agreement covered by this section applies to mineral
39 proceeds and the agreement contains a provision to pay compensation that includes a portion of
40 the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is
41 void and unenforceable.

42 (d) Means of Payment. – Any person who enters into an agreement covered by this
43 section with an owner shall be allowed to receive cash property, but not tangible property or
44 securities, on behalf of the owner but shall not be authorized to negotiate the check made payable
45 to the owner. Tangible property shall be delivered to the owner by the Treasurer, and securities
46 will be reregistered into the owner's name.

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

50 (f) Registration. – ~~Any person who enters into an agreement covered by this section with~~
51 ~~an owner~~ A property finder shall register each calendar year with the Treasurer. The information

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

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

9 **SECTION 2.(f)** Article 4 of Chapter 116B of the General Statutes is amended by
10 adding a new section to read:

11 "**§ 116B-78.1. Property finder regulation and enforcement.**

12 (a) A property finder shall be licensed as a private investigator by the North Carolina
13 Private Protective Services Board pursuant to Chapter 74C of the General Statutes.

14 (b) A property finder shall not initiate a claim with the Treasurer at any time prior to
15 being registered as a property finder under G.S. 116B-78(f) or prior to licensure as a private
16 investigator. Failure to comply with this subsection may result in the denial of the property
17 finder's registration for a period of up to one year.

18 (c) A property finder shall not initiate a claim with the Treasurer at any time prior to
19 obtaining a valid agreement with an owner or apparent owner. Failure to comply with this section
20 may result in the suspension of the property finder's registration for a period of up to one year.

21 (d) If a property finder enters into an agreement to locate property that does not comply
22 with G.S. 116B-78, then the Treasurer may suspend the property finder's registration for a period
23 of up to one year.

24 (e) A property finder with a suspended registration is prohibited from conducting
25 business with the Unclaimed Property Division. Any pending or potential claims shall be denied
26 during any period of suspension."

27 **SECTION 2.(g)** This section becomes effective January 1, 2022, and applies to
28 agreements entered into on or after that date.

29 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
30 law.