

# HOUSE BILL REPORT

## HB 2428

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### As Passed Legislature

**Title:** An act relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

**Brief Description:** Concerning fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

**Sponsors:** Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell, Kelley, O'Brien, Bailey and Ormsby; by request of Attorney General.

### Brief History:

#### Committee Activity:

Local Government & Housing: 1/25/10, 1/27/10 [DP].

#### Floor Activity:

Passed House: 2/10/10, 96-0.

Passed Senate: 3/4/10, 47-0.

Passed Legislature.

### Brief Summary of Bill

- Prohibits a business which provides the service of matching specified unclaimed property held by counties, cities, and other municipalities with the owners of such property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.
- Establishes that a business that violates the fee limitation provisions of the Uniform Unclaimed Property Act is in violation of the state Consumer Protection Act.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

**Majority Report:** Do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

**Staff:** Thamas Osborn (786-7129).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Uniform Unclaimed Property Act.

Under the state Uniform Unclaimed Property Act (UUPA), a business that holds unclaimed intangible property must transfer it to the Department of Revenue (DOR) after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the period is three years. After the holding period has passed, the business in possession of the property must transfer it to the DOR.

Under the UUPA, the DOR's duty is to find the rightful owner of the property, if possible. One of the DOR's responsibilities is to place a notice by November 1 of each year in a newspaper of general circulation in each county which contains the last known address of an apparent owner of unclaimed property that is reported and turned over to the state in that year. If the DOR does not have any such address, then the notice must be published in the county in which the holder of the property has its principal place of business. The DOR is required to mail notices by September 1 of each year to apparent owners of unclaimed property that has been reported and turned over to the state in that year. The notice must contain the name and last known address of the person holding the property.

Under certain circumstances, counties, cities, and other municipal corporations are not subject to the UUPA, and are therefore exempt from the DOR reporting requirements regarding specified types of abandoned property. Such property includes certain canceled warrants, uncashed checks, excess proceeds from foreclosures pursuant to the enforcement of property tax delinquencies, and property tax overpayments or refunds. The local government may retain such property until notified by the owner but must provide a listing of such property to the DOR.

Businesses that match unclaimed property held by the DOR with the owner are known as "heir locators." These businesses are prohibited from charging the owner a fee of more than 5 percent of the property's value.

### Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The state Attorney General may bring an action to enforce the provisions of the CPA.

Under the CPA, a person may bring a civil court action if the person is injured in his or her business or property through: (1) unfair competition or practices; (2) contracts, combinations, or conspiracies in restraint of trade; (3) monopolies or attempted monopolies; (4) transactions and agreements not to use or deal in commodities or services of a competitor; or (5) acquisition of corporate stock by another corporation to lessen competition. Furthermore, a person may be considered injured if he or she refuses to accede to a proposal for an arrangement that, if consummated, would constitute one of these prohibited acts. The civil action may be to enjoin further violations, to recover actual damages, or both, together with the costs of the suit, including a reasonable attorney's fee. The court may, in its

discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

**Summary of Bill:**

The act eliminates the blanket exemption from the UUPA regulations as they apply to excess, unclaimed proceeds from property tax foreclosures, assessments, and liens held by counties, cities, and other municipalities. Specifically, the act prohibits businesses which provide the service of matching such unclaimed property with the owners of the property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.

A business that exceeds this fee limitation is in violation of the state CPA and is therefore subject to the remedies provided under the CPA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

(Opposed) None.

**Persons Testifying:** Representative Takko, prime sponsor; Jim Sugarman, Office of Attorney General; and Rose A. Bowman, Washington Association of County Treasurers.

**Persons Signed In To Testify But Not Testifying:** None.