

Date: February 23, 2017

TO: Senator Todd Weiler, Chairman, via email, tweiler@le.utah.gov

Members, Senate Judiciary, Law Enforcement & Criminal Justice Standing Committee

RE: [SB 175](#) – “Uniform Unclaimed Property Act” – OPPOSE

Dear Chairman Weiler:

I represent both the Securities Transfer Association (“STA”) and the Shareholder Services Association (“SSA”).¹ I am writing to express grave concerns regarding certain securities-related provisions of SB 175 which contravene important protections approved by the Uniform Law Commission in its recent enactment of the revised Uniform Unclaimed Property Act. The STA and SSA assisted the Uniform Law Commission (“ULC”) in developing the securities-related provisions of the Revised Uniform Unclaimed Property Act “RUUPA.” The RUUPA was adopted in 2016 in a manner which recognized the federal regulatory structure mandated by 17 C.F.R. §240.17Ad-17, as well as significant constitutional issues that were recently considered by the Supreme Court of the United States. Despite its title, SB 175 does not respect the RUUPA’s important protections for shareholders who are citizens of Utah. Accordingly, we urge you to delay voting on the securities-related sections of SB 175 until such time as members of the STA and SSA can discuss with you both practical issues and constitutional concerns raised by the bill.

While members of the STA and SSA will be happy to provide significant technical information on all of their concerns, the most troubling aspects of the SB 175 are the following:

- §67-4a-208 sets up a bifurcated system for considering securities abandoned. Subsection (a) appears to respect federal law; however, subsection (b) utilizes an inactivity standard. Subsection (b) thus circumvents Securities and Exchange Commission regulations requiring outreach to owners prior to escheatment. These important protections are preserved in the ULC’s approved version of the RUUPA.
- The inactivity standard embodied in §67-4a-208 (b) will lead to escheatment of securities that are not actually abandoned by their owners. Utah’s citizens should not be deprived of their property under the guise of a statute designed to reunite owners with their property. Practical experience indicates that this section will disproportionately impact seniors.
- §67-4a-702 allows the state to liquidate securities upon receipt. This section unquestionably operates as a taking. The liquidation of securities by unclaimed property administrators is currently the subject of litigation across the country. Notably, the Supreme Court of the United States has called into question

¹ Founded in 1911, the STA represents more than 100 transfer agents who are responsible for the record keeping for more than 15,000 issuers of securities, representing the investments of over 100,000,000 registered shareholders. The SSA was founded in 1946 with a mission of facilitating its members’ compliance with complex state and federal regulatory matters relating to securities. The SSA counts hundreds of public companies as its members and is proud to support its members’ service to their shareholders while achieving regulatory compliance. Combined, the STA and SSA’s members are directly or indirectly responsible for the record keeping and maintenance of the securities investments of one third of the United States population. For many of these shareholders, these investments in securities represent their life savings.

whether the states' actions in these cases satisfies due process. SB 175 does not even provide minimal notice to satisfy the Supreme Court's due process concerns and will lead to many causes of action against the administrator when Utah shareholders suffer loss in value.

- §67-4a-703 does not make the shareholder whole when the state sells securities. The ULC's RUUPA provides protections to shareholders which have been dismantled by SB 175. This will lead to loss of value to shareholders and creates significant risk for Utah's corporate community.
- §67-4a-804 asserts that property that has been escheated to the state is held in custody for the benefit of the owner and is not owned by the state. If this section is accurate, then the state should not be able to sell owners' securities without their approval or even notice. Such sales destroy savings, create irreversible tax consequences, sever the shareholders' interest in the company, and void the shareholders' ability to enjoy the benefits of corporate ownership, such as the ability to participate in management decisions, corporate profits, or corporate actions. This cannot be said to benefit the owner.
- §67-4a-208 (4) provides assumptions regarding the escheatability of securities upon the date of the owner's death, without regard for whether the holder has actual knowledge of the shareholder's death. This section serves to deem securities escheatable retroactively, subjecting holders to constitutionally impermissible retroactive penalties and fines.
- §67-4a-501 (c) requires due diligence notices for securities property to be sent via certified mail. When combined with §67-4a-208 (b), this section could require the expense of certified mail for virtually all shareholders of issuers who do not pay dividends. As you are likely aware, many of the Fortune 500² do not pay dividends in favor of reinvesting in the company's growth.
- As a practical matter, the bifurcated system created by §67-4a-208 for analyzing whether securities are abandoned will be extremely difficult to implement with compliance software and will lead to reporting difficulties in Utah.

Clearly these issues are significant and should not be voted upon without proper consideration by the Committee members. The STA and SSA worked with the ULC for years to arrive at a RUUPA with securities provisions which protect owners in a manner consistent with federal law and constitutional considerations. Therefore, we urge you not to vote on SB 175 without the opportunity to address these concerns and look forward to a call to discuss at your earliest convenience. Thank you for your consideration.

Sincerely,



Jennifer C. Borden

cc: Cynthia Jones, Executive Director, Securities Transfer Association
Abby Cowart, Executive Director, Shareholder Services Association
Dennis Johnston, Utah Unclaimed Property Administrator

² Some examples of Fortune 500 companies which do not pay dividends are Amazon, Berkshire Hathaway, Biogen Idec, eBay, Facebook, Genworth Financial, Google and Yahoo.