

Date: May 18, 2017

TO: Hon. Barbara Flynn Currie, Chair, [repcurrie@sbcglobal.net](mailto:repcurrie@sbcglobal.net)  
Hon. Dan Brady, [dan@rep-danbrady.com](mailto:dan@rep-danbrady.com)  
Hon. Lou Lang, [langli@ilga.gov](mailto:langli@ilga.gov)  
Hon. Tom Demmer, [demmer@ilhousegop.org](mailto:demmer@ilhousegop.org); [rep@tomdemmer.com](mailto:rep@tomdemmer.com)  
Hon. Arthur Turner, [arthurt@ilga.gov](mailto:arthurt@ilga.gov)

RE: [HB 2603](#) – “Revised Uniform Unclaimed Property Act”

Dear Members of the Rules Committee:

I represent both the Securities Transfer Association (“STA”) and the Shareholder Services Association (“SSA”).<sup>1</sup> I am writing to express serious concerns regarding certain securities-related provisions of HB 2603 which contravene important protections approved by the Uniform Law Commission (“ULC”) in its recent enactment of the Revised Uniform Unclaimed Property Act (“RUUPA”). The STA and SSA assisted the ULC in developing the securities-related provisions of the 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 administered by the Securities and Exchange Commission (“SEC”), as well as significant constitutional issues that were recently considered by the Supreme Court of the United States. Despite its title, HB 2603 does not respect the RUUPA’s important protections for shareholders who are citizens of Illinois. Accordingly, we urge you to delay voting on the securities-related sections of HB 2603 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 HB 2603 are the following:

- §208 sets up a trifurcated system for considering securities abandoned. Subsection (a)(1) appears to respect the federal law referenced above and would allow for address updates and outreach to lost shareholders; however, subsection (a)(2) utilizes an inactivity standard. Subsection (a)(2) thus circumvents the federal law requiring outreach to owners. These important protections are preserved in the ULC’s approved version of the RUUPA. Further, §208 (d) requires escheatment two years after the shareholder’s death, which will frustrate the efforts of beneficiaries and complicate the usual process for succession of property.
- The inactivity standard embodied in §208 (a)(2) will lead to escheatment of securities that are not actually abandoned by their owners. The citizens of Illinois should not be deprived of their property under the

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<sup>1</sup> 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.

guise of a statute designed to reunite owners with their property. Practical experience indicates that this section will disproportionately impact seniors who are counting on their investments to be preserved until such time as they need to liquidate their securities for their own use.

- §208 (d) 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, or whether the shareholder's heirs are in the process of transferring the shares. This section serves to deem securities escheatable retroactively, subjecting holders to constitutionally impermissible retroactive penalties and fines. Further, there will be no opportunity to transfer the deceased shareholder's property to beneficiaries without inserting the state into the probate process.
- §501 (c) requires due diligence notices for securities property to be sent via certified mail initially, without regard for whether the notice provisions of §§501(a) and (b) might be successful. When combined with §208 (a)(2), 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 500<sup>2</sup> do not pay dividends in favor of reinvesting in the company's growth. We suggest that the certified mail requirement of subsection (c) should only be implicated if the outreach mandated by subsections (a) and (b) are not successful. This approach will also allow owners to receive additional notifications for higher value property. Further, we note that this section is internally inconsistent with IL SB 1470, which will lead to decreased clarity and increased expense for holders. As a practical matter, the certified mail requirement also adversely impacts seniors who may not be able to get to the door quickly to meet the mailman.<sup>3</sup>
- As a practical matter, the trifurcated system created by §208 for analyzing whether securities are abandoned will be extremely difficult to implement with compliance software and will certainly lead to reporting difficulties in Illinois.

We commend Illinois for its efforts to modernize its Unclaimed Property Law and for embracing many of the important consumer protection measures adopted by the ULC. A new statute also provides a wonderful opportunity to simplify compliance for the state, holders and owners alike. The current draft contains provisions which we believe will lead to confusion in implementation, rather than the clarity that the RUUPA achieved. 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 HB 2603 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  
 Roxanna Hollenstine, Director of Illinois Unclaimed Property Division

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

<sup>3</sup> Sections 501(c), 208(a)(2) and 208(d) are all markedly out of step with neighboring states such as Iowa, Indiana, Michigan and Wisconsin, whose laws do not impose such stringent conditions to prevent escheatment.