



February 15, 2019

The Honorable Les Eaves
Arkansas State Capitol
Arkansas State Legislature
500 Woodlane Street, Suite 350
Little Rock, AR 72201

via e-mail: les.eaves@arkansashouse.org

Re: HB1427 – To Amend the Law Concerning Unclaimed Property; and to Declare an
Emergency

Dear Representative Eaves:

The Securities Transfer Association (“STA”) and Shareholder Services Association (“SSA”) write to express our grave concerns regarding certain provisions of Bill 1427, which allows the Administrator to liquidate unclaimed securities immediately upon receipt depriving unsuspecting shareholders of their property rights without just compensation. For the reasons discussed herein, the provision is not only at odds with the consumer protection policy underlying the unclaimed property laws, but it is also inconsistent with the corresponding provisions enacted by the Uniform Law Commission (“ULC”) as part of the Revised Uniform Unclaimed Property Act (“RUUPA”). The end result of the bill as currently proposed is an evisceration of an important element of protection for shareholders.

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 securities¹, 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.

¹ These issuers include all of the largest public companies in Arkansas.

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.

The STA's and SSA's members are directly or indirectly responsible for compliance with escheat laws nationwide and have an interest in seeing that the escheat laws are administered so as not to create risk of loss for these shareholders. We are writing to request that you reject Bill 1427, which will undoubtedly cause significant loss for citizens of Arkansas, with a particularly adverse impact on seniors. As noted above, Bill 1427 is at odds with the RUUPA passed by the ULC in July 2016. As you may be aware, Arkansas' ULC Commissioners voted to enact the RUUPA. Surprisingly, however, Bill 1427 ignores the liquidation provisions of RUUPA instead seeking to reduce drastically the period of time that the Administrator is required to hold escheated securities prior to liquidation.

RUUPA was the result of a thoughtful, multi-year process which included input from all relevant stakeholders. The immediate liquidation provision was specifically debated. As a result, section 702 of the RUUPA was adopted, preventing the liquidation of securities for at least three (3) years after the state receives the property.² Further, if shareholders claim their property from the state within six years of its escheatment and the shares have been sold, the unclaimed property administrator is required to make the shareholder whole.³ Please note that the National Association of Unclaimed Property Administrators served as an advisor to the RUUPA and agreed to these protections, in recognition that the goal of any unclaimed property program is to protect property for rightful owners.

In contrast, the current language of Bill 1427 allows the Administrator to liquidate escheated securities upon receipt.⁴ This action prevents a shareholder from being able to take the steps necessary to recover the full value of his or her shares. This is because the shareholder's claim is limited to the amount received from the sale of the shares, less expenses, even though the shares should not have been sold in the first instance. Bill 1427 highlights the necessity of a three (3) year waiting period as it goes on to state that the rightful owner may not maintain an action or bring a proceeding for any appreciation or depreciation in the value of the securities against the state; the administrator; the holder; the transfer agent; an auctioneer; or an agent acting on behalf of the holder or the administrator. As such, the language of the bill acknowledges that a shareholder would be put in a losing situation. That is, the shareholder would suffer loss, but at the same time be foreclosed from seeking recourse to recover the full value of his or her property. Further, the liquidation will create an irreversible tax consequence for the shareholder. Clearly, these outcomes are not in the best interest of the shareholder.⁵

² Rev. Unif. Disposition of Unclaimed Prop. Act § 702 (2016).

³ *Id.* at § 703.

⁴ In 2017, Arkansas HB 1142 also proposed prompt liquidation of securities. Thankfully the legislature in 2017 agreed with our position that HB 1142 would harm shareholders and declined to enact that bill.

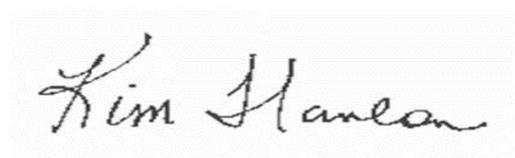
⁵ Another consequence of prompt liquidation is that it will likely increase the expenses and administrative work of the Arkansas State Auditor.

Further, the bill notes that prompt liquidation will save the *state* money and allow the *state* to invest the proceeds received from the sale of securities in order to provide a greater financial return for the *state*. The purpose of an unclaimed property law is to provide for the safekeeping of abandoned property and then reunite the property with its *owner*. Securities are not the same as cash. Rather, they represent the shareholder's ownership interest in a company. This includes the right to participate in management decisions via proxy voting; the right to company profits via receipt of dividends; and the right to appreciate company value via increases in the price of the security. The prompt liquidation of securities terminates all of these property interests. Therefore, instead of protecting *owners* and reuniting them with their property, Bill 1427 would deprive *owners* of their property rights in order to create a better return on investment for the *state*. Gaining such a financial return should not be of an emergency level of concern over the protection of *owner* assets.

A clear example of the risks caused by prompt liquidation is the recent settlement by the state of Delaware of a multi-year litigation brought by shareholders who lost over twelve million dollars in value due to the state's prompt liquidation of securities.⁶ While this case was very high profile, there are hundreds of similar cases in which shareholders have been harmed by liquidation provisions in unclaimed property statutes that are intended to be consumer protection measures. The seriousness of this issue was addressed by the Supreme Court of the United States in the *Taylor v. Yee* decision, enclosed for your review. In *Taylor*, the Supreme Court took specific notice that such seizures raise constitutional issues, particularly when the shareholder has not received adequate notice.⁷ Liquidation upon receipt will guarantee that the shareholder will not receive any notification from the state prior to the seizure – exactly what the Court cautioned constituted a due process violation.

In order to protect shareholders, we strongly urge the State of Arkansas to reject House Bill 1427 and retain the language of Arkansas Code § 18-28-212(b). We welcome the opportunity to discuss our concerns with you. Thank you in advance for your consideration of this important issue.

Sincerely,



Kim Hanlon
President
Shareholder Services Association



Todd J. May
President
Securities Transfer Association, Inc.

⁶ JLI Invest S.A. et al. v. Cook et al., Del. Ch. No. 11274-VCN (2015).

⁷ Taylor v. Yee, 136 S. Ct. 929 (2016).

enclosure

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