

THE STA

SECURITIES TRANSFER ASSOCIATION, INC.

Established 1911

April 30, 2018

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Representative Walter Leger
State Capitol
Box 94062
Baton Rouge, LA 70804

Re: Louisiana House Bill 851 - Limitation on owner claims

Dear Representative Leger:

The Securities Transfer Association, Inc. ("STA") is an organization of professional shareholder recordkeepers. Founded in 1911, the STA's membership is comprised of over 100 large and small transfer agents maintaining records for more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public companies and mutual funds to small privately held companies). Our members report unclaimed property as required by state laws on behalf of these 15,000 holders.

EROSION OF CONSUMER PROTECTION

The purpose of this letter is to share concerns regarding House Bill 851 which proposes to amend § 167(A) of the Louisiana Uniform Unclaimed Property Act of 1997 ("LUUPA"). Chiefly, our concern is that the legislation erodes the "consumer protection" purpose of the Act by permitting the state to permanently block owner/heir access to their property after thirty years. More specifically, HB 851 places a limit on the number of years an owner or heir can file a claim to "thirty years from the date the property is paid or delivered to the administrator."

This concept of permanent escheat contradicts the state's objective of protecting the interest of owners or heirs in perpetuity. This objective is illustrated on the Louisiana State Treasurer's website which indicates that, "The State Treasurer is holding millions of dollars in unclaimed funds for Louisianians. The State holds these lost funds until they are claimed by either the original owner or their heirs. They can be claimed at no cost with the proper identification."

Further, consider that in Title 9, Louisiana Revised Statutes, Chapter 1, §151 it states that in reference to Chapter 1 (Uniform Unclaimed Property

Act): This Chapter may be cited as the “Uniform Unclaimed Property Act of 1997”. §152 (Uniformity of Application and Construction) provides: This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it. LUUPA is derived from the Uniform Unclaimed Property Act of 1995 which states in the Uniform Law Commission summary as follows:

UUPA (1995) and its predecessors essentially abolish the common law on abandoned property and significantly change the escheat notion for intangible personal property. Intangible personal property that is unclaimed (the term that succeeds abandoned) does not escheat to the State nor is it available for anyone who can assert possession and control over it, but if transferred to the State *as a permanent custodian for its owners* (emphasis supplied).

Unfortunately, enactment of LA HB 851 would place a time limit on the aforementioned permanent custodianship and directly contradicts the statutory purpose of uniformity as stated in LUUPA §152 as well as the provisions of LUUPA §162 (B) which provides that upon “...payment and delivery of property to the administrator, the state assumes *custody and responsibility for the safekeeping of property*”(emphasis supplied). Additionally, **the Bill does not address what will happen to the unclaimed property held in custody by the administrator after the thirty year time frame expires.**

LA HB 851 would serve to create a *de facto* permanent escheat by limiting the time period for owners to claim their property without the notice and right to hearing statutory due process protections for owners that states provide to parties in interest in permanent escheat matters, e.g. California Code of Civil Procedure §1410, Texas Property Code §71.101 ff.

CONSTITUTIONAL DUE PROCESS ISSUES

LA HB 851 appears to be unconstitutional as the Supreme Court of the United States (“SCOTUS”) has held that “...The Due Process Clause requires States to give adequate notice before seizing private property. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950) as cited in *Taylor v. Yee*, 136 S.Ct.929, 194 L.Ed. 2d 237, 2016 U.S. Lexis 1009 (2016). In addition SCOTUS has held that the Fifth Amendment to the United States Constitution requires the government to pay just compensation when it takes personal property. *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015).

The STA recognizes that unclaimed property is a large liability on the books of the state Treasurer, however the impacts of passing HB 851 would change the LUUPA from a custodial law to a permanent escheat law and would not be in the best interest of the owners. The STA hopes that the legislature will reconsider the passage of this Bill.

Sincerely,



Cynthia Jones
Executive Director