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January 31, 2020

The Honorable Eli Bebout, Joint Appropriations Committee Co-Chair
Wyoming State Legislature
Box 112
Riverton, WY 82501

The Honorable Bob Nicholas, Joint Appropriations Committee Co-Chair
Wyoming State Legislature
6225 Mountainview Drive
Cheyenne, WY 82009

Via email to: eli.bebout@wyoleg.gov, bob.nicholas@wyoleg.gov

Re: Wyoming Draft Bill 398

Dear Senator Bebout and Representative Nicholas:

The purpose of this letter is to express our concerns on the provisions in Wyoming Draft Bill 398 ("WY DB 398"). Our primary concern is that the legislation erodes the "consumer protection" purpose of the Wyoming's Uniform Unclaimed Property Act¹ ("UUPA") by providing for the state to permanently prohibit original owners or those subsequently entitled to the property after 25 years. Specifically, placing a limit on the number of years owners can file a claim to "within twenty-five (25) years after the date on which the unclaimed property was delivered or paid to the administrator under this UUPA" for property valued at less than one hundred dollars (\$100.00).²

EROSION OF CONSUMER PROTECTION

This concept of terminating the rights of property owners contradicts the Wyoming UUPA's own provisions as the Wyoming UUPA provides for the

¹ (Wyo. Stat. § 34-24-101, et al.)

² WY DB 398

perpetual right for owners or those subsequently being entitled to a property to claim the property. Specifically stating, “All unclaimed property shall be placed in the custody of the administrator, subject to the perpetual right of the party originally owning or being entitled to the property to reclaim it upon proper proof of ownership and identity.”³ Additionally, the Bill does not address what will happen to the unclaimed property held in custody by the administrator after the 25 year time frame expires.

WY DB 398 would serve to create a *de facto* permanent escheat by limiting the period of time owners have to claim their property. Furthermore, this would be done without notice and statutory due process protections that states provide to parties with interest in permanent escheat matters, e.g. California Code of Civil Procedure §1410, Texas Property Code §71.101 ff.

NAUPA RESOLUTION

The National Association of Unclaimed Property Administrator’s (“NAUPA”) *Resolution for Preserving the Right of Owners to Recover Unclaimed Property from States in Perpetuity*⁴ (Resolution) conveys NAUPA’s strong opposition to limiting or terminating an owners’ ability to claim unclaimed property. This is evident in the declaration, “statutorily denying a rightful owner the ability to recover unclaimed property transferred to the custody of a state could give rise to legal challenges, including potential constitutional challenges.”

The Resolution delineates “the fundamental purpose of state unclaimed property laws is to protect the public” and ensure “owners do not lose their rights to personal property.” Further stating, “the purpose and integrity of all state unclaimed property programs would be severely compromised if rightful owners were unnecessarily limited as to the period of time in which they could recover unclaimed property transferred to the custody of a state.” It also specifically notes “the Uniform Unclaimed Property Acts adopted by the Uniform Law Commission have repeatedly recognized that states do not take title to unclaimed property but, instead, take custody of the property and hold it in perpetuity for the owner.”

CONSTITUTIONAL DUE PROCESS ISSUES

Expanding on the reference to possible legal challenges in NAUPA’s Resolution, WY DB 398 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.*⁵ 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.*⁶

The STA recognizes unclaimed property is a large liability for states to maintain. However, enactment of WY DB 398 would change the UUPA from a custodial law to one which terminates

³ §34-24-101(d)

⁴ <https://unclaimed.org/wp-content/uploads/Resolution-on-claimant-time-limits-NAST-and-NAUPA-Approved.pdf>, approved on June 9, 2019

⁵ 339 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)

⁶ 135 S. Ct. 2419 (2015)

owners' rights. This would not be in the best interest of the owners. Therefore, the STA does not recommend this bill move forward and hopes the legislature will reconsider the passage of DB 398. We are happy to speak with you to provide additional context and background.

Sincerely,

A handwritten signature in black ink that reads "Todd J. May". The signature is fluid and cursive, with the first name "Todd" and last name "May" clearly legible.

Todd J. May
President
Securities Transfer Association

cc: via email

Honorable Curtis E Meier, Jr., Treasurer, treasurer@wyo.gov

Jeff Robertson Unclaimed Property Director, jeff.robertson@wyo.gov

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Founded in 1911, the STA is the professional association of transfer agents and represents more than 130 commercial stock transfer agents, bond agents, mutual fund agents, and related service providers within the United States and Canada. STA membership consists of banks and independent transfer agents that perform record keeping services for publicly traded companies and mutual funds, corporate transfer agents that perform the same service for their own corporations, and companies that support organizations involved in the transfer of securities. Collectively, STA members serve as transfer agents for more than 15,000 publicly traded corporations, providing record keeping and other services to more than 100 million shareholders.