



March 21, 2023

The Honorable Greg Hertz, Chair
Senate Committee on Taxation
PO Box 1747
Polson, MT 59860-1747

via e-mail: greg.hertz@legmt.gov

Re: House Bill 136 – Amending Montana’s Uniform Unclaimed Property Act

Dear Chair Hertz:

The Securities Transfer Association (“STA”) and Shareholder Services Association (“SSA”) write to express our grave concerns regarding certain provisions of House Bill 136 (“H.B. 136”). H.B. 136 would make a number of changes to Montana’s Uniform Unclaimed Property Act. Of particular concern to the STA and SSA is the requirement for unclaimed property holders to liquidate “unclaimed” securities and remit the proceeds to the Department of Revenue within thirty (30) days of the filing of the corresponding unclaimed property report. For the reasons discussed herein, the proposed 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”). As currently drafted, the proposed bill amounts to an evisceration of an essential element of protection for shareholders, frustrates federal law and is unconstitutional. Practically speaking, implementation is not possible, since holders do not have authority to liquidate the property of third parties.

Founded in 1911, the STA represents more than 100 transfer agents¹ who are responsible for the record keeping for more than 15,000 issuers of securities², 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

¹ Some of the STA’s member transfer agents service the mutual fund community. In the interest of brevity, we concur with the concerns with H.B. 136 expressed by the Investment Company Institute in its March 15, 2023 letter, without the need for repeating in this letter.

² These issuers include all of the public companies in Montana.

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, including citizens of Montana, 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 H.B. 136, which will undoubtedly cause significant loss for citizens of Montana, with a particularly adverse impact on seniors. As noted above, H.B. 136 is at odds with the RUUPA passed by the ULC in July 2016. As you may be aware, Montana's ULC Commissioners voted to enact the RUUPA. Surprisingly, however, H.B. 136 ignores the asset protection provisions of RUUPA, and instead seeks to take property without notice, without a guarantee that shareholders will be made whole, and without indemnification to the holder who attempts in good faith to comply with the law.

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.³ 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.⁴ Please note that the National Association of Unclaimed Property Administrators ("NAUPA") 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.

Similar to the language used in RUUPA, Montana's current unclaimed property law requires to the Department of Revenue to hold securities for three (3) years after their delivery.⁵ The Department is also required to provide notice, at least three (3) weeks prior to the sale, "in a newspaper of general circulation in the county in which the property is to be sold."⁶ Further, "[i]f securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under this part before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale."⁷ In contrast, the proposed language of § 70-9-809(2) of H.B. 136 requires *the holder* to liquidate securities when they are

³ Rev. Unif. Disposition of Unclaimed Prop. Act § 702 (2016).

⁴ *Id.* at § 703.

⁵ Mont. Code Ann. § 70-9-812(1).

⁶ *Id.*

⁷ *Id.* at § 70-9-812(2). Additionally, "[a] person making a claim under this part *after* the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator." *Id.*

presumed abandoned and remit the proceeds to the Department of Revenue.⁸ Compounding this problem is the proposed lack of notice to shareholders.⁹

The purpose of an unclaimed property law is to provide for the safekeeping of abandoned property and to reunite the property with its owner. Securities are not the same as cash. Rather, they represent the shareholder's ownership interest in a company and comprise a bundle of rights. 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 pre-escheat liquidation of securities terminates all of these property interests.¹⁰ Therefore, instead of protecting owners and reuniting them with their property, H.B. 136 would deprive owners of their property rights in order to ease alleged administrative burdens for the Department of Revenue. It is important to note that liquidation will also trigger tax withholding and irreversible tax consequences for the owner.

A clear example of the risks caused by prompt liquidation is the 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.¹¹ 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. 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.¹² Liquidation in the manner proposed by H.B. 136 will guarantee that the shareholder will not

⁸ Section 70-9-809(2), H.B. 136, 68th Leg. (Mt. 2023).

⁹ The holder would only be required to send a due diligence notice to shareholders without a known bad address "not more than 120 days or less than 60 days before filing the report". *Id.* at § 70-9-808(5). Pursuant to federal law, if a holder sends mail to the shareholder at his or her address of record and that mail is returned to the holder as undeliverable, the holder is required to conduct searches of national databases to in an attempt to find a new, valid address for the owner. Lost Securityholders and Unresponsive Payees, 17 C.F.R. § 240.17Ad-17.

¹⁰ E.g., Elizabeth Elkins, *Warren Buffett and Jack Bogle agree on the formula for long-term success: "Buy and hold"*, CNBC: Money (Sept. 18, 2018); Trent Gillies, *Warren Buffett: Buy, hold and don't watch too closely*, CNBC (Mar. 5, 2016), <https://www.cnbc.com/2016/03/04/warren-buffett-buy-hold-and-dont-watch-too-closely.html> ("Buy-and-hold is the best strategy. 'The money is made in investments by investing... and by owning companies for long periods of time.'"); Rick Ferri, *Set it and Forget it Works*, Forbes (June 11, 2015), <https://www.forbes.com/sites/rickferri/2015/06/11/set-it-and-forget-it-works/?sh=7f04ed446e61> ("... automation leads to disciplined savings and to a much better shot at achieving investment success. Get it out of your hands. Let someone else do it... Automation is the key to a successful savings and investing plan."); "If you aren't willing to own a stock for ten years, don't even think about owning it for ten minutes." Berkshire Hathaway, Inc., Chairman's Letter to Shareholders (Feb. 28, 1997) available at <https://www.berkshirehathaway.com/letters/1996.html>.

¹¹ *JLI Invest S.A. et al. v. Cook et al.*, No. 11274-VCN (Del. Ch. 2015). See also *Complaint, Salvato and Kydd et al. v. Harris*, No. 3:21-cv-12706 (D. N.J. June 10, 2022); *Complaint, Peters v. Yee*, No. 3:21-cv-01125 (S.D. Cal. June 16, 2021); *Complaint, Meril v. Computershare Inc. and Lincoln Electric Holdings, Inc.*, No. 1:21-cv-00811 (N.D. Ohio Apr. 16, 2021); *JLI Invest S.A., et al. v. Computershare Trust Co., N.A. et al.*, Civ. No. 15-cv-11474 (D. Mass. Jan. 23, 2017); *Taylor v. Yee*, 136 S. Ct. 929 (2016); *Sotos v. Computershare Trust Co., N.A.* (D. Conn. 2016); *JLI Invest S.A. et al. v. Cook et al.*, No. 11274 (Del. Ch. 2015); *Vondjidis v. Hewlett Packard Corp.*, 85 Cal. Rptr. 3d 806 (Cal. App. 2009).

¹² *Taylor v. Yee*, 136 S. Ct. 929 (2016).

receive any notification from the state prior to the seizure – exactly what the Court cautioned constituted a due process violation. It bears repeating, there is simply no mechanism for a holder to liquidate shares without an appropriate authorization from **the owner** or **the owner's authorized representative**. H.B. 136 ignores this reality, revealing a lack of familiarity with the investor protections put in place by the Securities and Exchange Commission, the Financial Industry Regulatory Authority (“FINRA”),¹³ and private contracts, all of which prevent transfer (which includes a sale) without proper authorization.

In order to protect Montana’s shareholders, we strongly urge you to reject H.B. 136 in its current form and amend the proposed § 70-9-809(2) in accordance with the RUUPA. We welcome the opportunity to discuss our concerns with you. Thank you in advance for your consideration of this important issue.

Sincerely,



Nicole Mauney
President
Shareholder Services Association



Peter Duggan
President
Securities Transfer Association

¹³ FINRA is authorized by Congress to protect America’s investors.