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VIA ELECTRONIC MAIL

January 25, 2023

Members of the House Committee on
Emergency Management, General Government, and Veterans
Oregon State Legislature
900 Court St., NE
Salem, Oregon 97301

RE: House Bill 2160 - Relating to Unclaimed Property

Dear Chair Grayber, Vice-Chair Lewis, Vice-Chair Tran, and Members of the Committee:

My name is David Kennedy and I am the General Counsel & Member of Kelmar Associates, LLC (“Kelmar” or the “Company”), one of the nation’s leading unclaimed property compliance service companies. I am writing to express Kelmar’s support of House Bill 2160 and to urge your approval and acceptance of the important proposed changes to the abandonment presumptions for securities and distributions.

For more than two decades, Kelmar has worked exclusively on behalf of government entities to: (a) develop and enforce their respective unclaimed property compliance programs; and (b) assist states in fulfilling the primary purpose of unclaimed property laws: returning unclaimed property to its rightful owners. Currently, Kelmar is engaged by 49 jurisdictions in performing unclaimed property compliance services, records and database management, owner location, and unclaimed property claims processing.

Serving unclaimed property programs requires that Kelmar fully understand the requirements of the law in each state as well as the various uniform unclaimed property laws that form the basis for state unclaimed property statutes. Kelmar’s legal team specializes in unclaimed property law and is staffed with attorneys with extensive expertise in this area, including an attorney who acted as Official Advisor to the Uniform Law Commission in the drafting of the 1995 Uniform Unclaimed Property Act and another who served as Counsel to the National Association of Unclaimed Property Administrators (NAUPA) during proceedings concerning the most recent 2016 Revised Uniform Unclaimed Property Act. Kelmar attorneys have extensive experience working with most states across the country performing an independent review and drafting suggestions and revisions to proposed unclaimed property legislation.

The knowledge and background of Kelmar’s legal team, the various unclaimed property tools employed, and Kelmar’s long history working with state unclaimed property programs nationwide give the Company a broad perspective on drafting unclaimed property legislation



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that draws on the laws of all the states, the Uniform Unclaimed Property Laws, industry trends, and practical experience.

House Bill 2160 is good for Oregonians because the proposed legislation includes changes that will modernize, enhance, and clarify the State of Oregon's existing law while ensuring protection for confidential holder and owner information. In support of these efforts, Kelmar respectfully offers the following comments on Oregon House Bill 2160.

1. **Section 98.322 - Abandonment of securities and distributions.**

Oregon is currently one of the few states where there is no abandonment trigger specified for non-dividend paying securities (a cash distribution or dividend check must remain uncashed for three (3) years). It is also one of the *only* states where stock enrolled in a dividend reinvestment plan ("DRP") is not ever considered abandoned unless other securities within the same account have uncashed dividends. As a practical matter, owners in DRP accounts do not also elect to receive physically issued cash dividend checks. As it now stands, owners of abandoned stock with these types of assets would never receive outreach from the holder to make them aware of a potentially forgotten investment and thus, never have their property reported to the State of Oregon (the "State"), where they could be reunited with their assets free of charge.

Decades ago, most securities were issued as physical certificates that were mailed to the owner. Checks were also mailed physically to the owner as electronic transfer was not common. Enrollment in dividend reinvestment plans was rare and the concept of abandonment of underlying shares was still relatively new. Since that time, however, the majority of states that previously adopted a version of Oregon's current provision have updated their statutes to provide a mechanism for determining the abandonment of all securities types. Kelmar encourages Oregon to do the same.

House Bill 2160 revises the current law to include all securities and bases abandonment of securities and distributions on an inactivity standard, meaning there has been no owner activity and the owner has not communicated with the holder concerning the property for three or more years. Importantly, House Bill 2160 modernizes existing law to require that the holder send notice by email (instead of just physical mailings to addresses that may not have been kept current), if that is how they customarily communicate with the owner, prior to presuming abandonment. If the owner takes no action, fails to communicate in any way, and does not respond to the holder's outreach, at that time it is reasonable to presume abandonment with transfer of the assets to the State for safekeeping until claimed by the owner.

Historically, holders have advocated for an abandonment standard based on the return of first-class mail. Kelmar disagrees with reliance on this standard for several important reasons. First, most holders do not, in fact, frequently send communications by first-class mail; it is



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more likely that owners receive information electronically or by bulk mail, which is not returned to the sender if it cannot be delivered. Second, when first-class mail is sent to an owner's old address, or an incorrect address, it is often not returned to the sender because a forwarding order has expired, the person currently at the address discards it, the recipient is deceased, or there is an error at the Post Office. In these instances, accounts that are truly abandoned and which have had no owner generated activity for several years, may never be reunited with their owners, simply because mail was not returned to and tracked by the holder. House Bill 2160 eliminates these pitfalls and will further the purpose and intent of Oregon's unclaimed property law to reunite unclaimed property with its rightful owners.

2. Sections 98.334 and 98.336– Abandonment of wages.

Current law does not define “wages” and provides for a three-year dormancy period. Wages held by a court, government, or government agency are treated separately.

House Bill 2160 defines “wages” broadly to include all types of employee compensation, other than amounts held on a payroll card. The dormancy period is reduced to one year. All wages are covered under this section.

The proposed definition of “wages” is helpful in ensuring that payments owed to employees for all types of personal services will be reported timely and made available for claim by owners. The one-year dormancy period is consistent with the unclaimed property law in most states and with the uniform unclaimed property acts dating back to 1981.

3. Section 98.322 – Payment of income on property after delivery until sale.

House Bill 2160 requires payment by the State of income generated by securities from the time of delivery to the State Treasurer until the property is sold. The proposal is consistent with the practice of most states. It avoids a windfall to the State (a complaint expressed by some holders and their advocates) and gives the owner the benefit of funds generated on the property for the period the State holds it in custody.

4. Section 192.355 – Exemption of certain records of the State Treasurer from public records laws.

House Bill 2160 exempts from public disclosure all materials or communications received during an unclaimed property examination.

Kelmar strongly supports measures to protect the confidentiality of personal, financial, and commercial information of owners, holders, and claimants. Our Company appreciates the public's right to know but also understands this right must be balanced with the privacy rights of citizens (both corporate and natural individuals). Without protective measures like that contained within House Bill 2160, holders may refuse to provide information required to

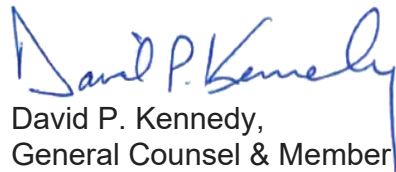


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perform an unclaimed property examination alleging concerns about trade secrets that may be derived from certain business records; the release of non-public business and financial information (including tax returns, bank records, general ledgers and accounting documentation often subject to review), and potential violations of existing privacy and consumer protection obligations adopted to safeguard personally identifiable information of property owners (found when examining payroll records, shareholder records, and other materials produced during an examination). In our experience, many holders also point to recent trends in identity theft, claims of fraud, and standard industry privacy policies / practices adopted when asserting concerns about confidentiality. House Bill 2160 would allay such concerns and potentially eliminate delays and/or obstruction to the enforcement of the State's unclaimed property law. House Bill 2160 will also offer protection to citizens who file unclaimed property claims, as during the process, these individuals are asked to provide proof of ownership, which in many cases includes production of sensitive documents and confidential personal information. In addition to these important considerations, the protection of information and materials received in connection with the enforcement of the State's unclaimed property statute would also conform with the practice followed by most states and the 2016 Revised Uniform Unclaimed Property Act.

In closing, I thank you for the opportunity to comment on and express Kelmar's support for House Bill 2160, which enhances consumer protection for Oregonians who have lost track of their property. Kelmar would be happy to provide additional information as needed and I may be contacted by email at David.Kennedy@kelmarassoc.com or via -telephone at 781-928-9205 to assist in that endeavor.

Very truly yours,



David P. Kennedy,
General Counsel & Member

cc: John DeMarco, Chief Operating Officer, Kelmar Associates, LLC