

# The Power of Positive Legislation



# Features of Zoom Webinar

All audience members are muted.

Use “Q & A” to ask questions of the panelists and organizers.

This webinar is being recorded and will be made available through the Education Committee web page.



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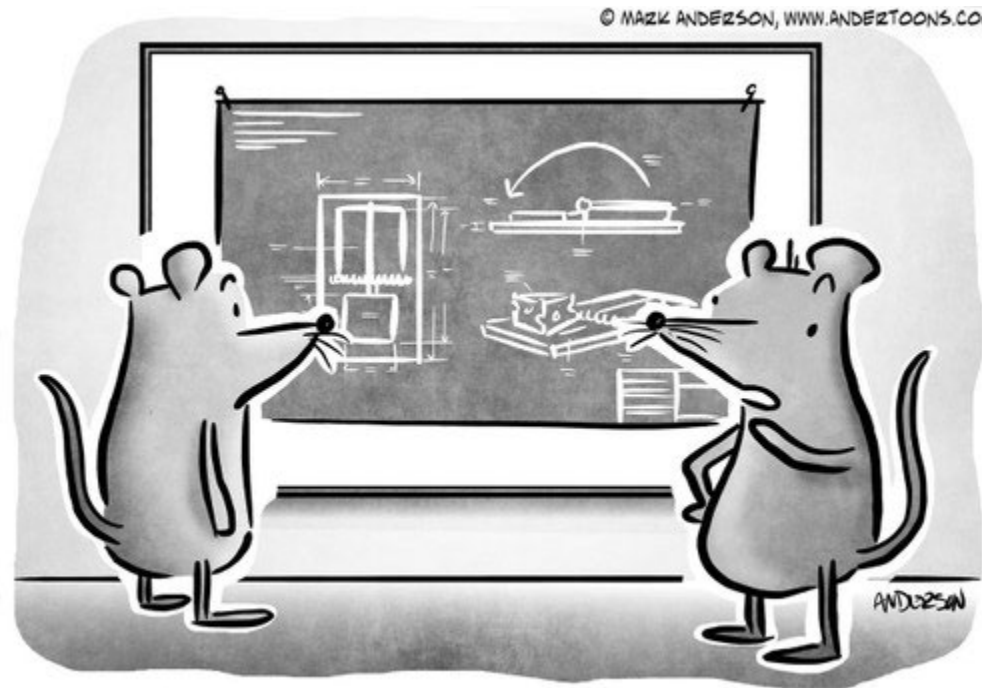
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# Reasons to Consider Proactive Legislative Changes to Existing UP Laws



"I can build a better mousetrap, but the *implications!*"





# To RUUPA or Not to RUUPA?

- **For 8 years consideration of adopting RUUPA has been the main legislative focus**
- **Only 13 states have adopted RUUPA (or a RUUPA-inspired law)**
- **It can be complex (see other NAUPA presentations):**
  - NAUPA made numerous recommendations to the ULC that were not adopted by RUUPA
  - States and holders have identified issues that RUUPA did not address
  - States and holders have identified sections of RUUPA that are unclear or incorrect
  - Following adoption of RUUPA, new issues and disputes have arisen



# Non-RUUPA States Still Have Issues

- Consider making changes to specific sections in non-RUUPA laws  
(there are things that RUUPA got right...)
- Achieve several goals:
  - Correcting mistakes/addressing technical issues
  - Addressing new issues that have arisen in past several years
  - Avoiding disputes
  - Improving effectiveness of UP laws in protecting owners of unclaimed property
  - Promoting uniformity of UP laws
- Changes can be prioritized and made over time



# Specific Statutory Changes to Consider



# Issue: Removing Automatic Transactions as a Presumption of Owner Interest

- **Specifics:** Under RUUPA, automatic (recurring) transactions at financial organizations are deemed owner activity, but such transactions are becoming more prevalent and often do not indicate owner awareness (e.g., the owner is deceased)
- **Primarily Impacted States:** States that have enacted RUUPA
- **Solution:** Amend the statute to limit the “indication of owner interest” to actual owner generated activity regarding the property





# Issue: Removing Automatic Transactions as a Presumption of Owner Interest (cont'd)

## ➤ Idaho Legislation Example:

“A deposit into or withdrawal from an account at a financial organization, **except** for a recurring automated clearinghouse debit or credit previously authorized by the apparent owner;”  
ID Statutes § 14-5-209(e)

## ➤ Florida Legislation Example:

“(e) A deposit into or withdrawal from an account at a financial organization, **excluding** an automatic deposit or withdrawal previously authorized by the apparent owner or an automatic reinvestment of dividends or interest, which does not constitute an expression of interest.”  
Section 717.102(3), F.S.



# Issue: Clarifying Statute of Limitations Provisions

- **Specifics:** Litigation brought by holders in Michigan argues that commencement of an exam does not constitute an “action or proceeding” that stops the SOL from running against the state
- **Primarily Impacted States:** States that have adopted a version of the 1981 Act or RUUPA
- **Solution:** Amend limitations provision to clearly state that SOL is tolled for property that is not reported and/or that commencement of exam stops the SOL from running

“An action or proceeding may not be maintained by the administrator to enforce this [Act] . . . more than 10 years **after the holder specifically identified the property in a report** filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitations is tolled.”  
1995 Act, § 19(b)



# Issue: Clarifying Statute of Limitations Provisions (cont'd)

## ➤ North Dakota Legislation Example:

“The periods of limitation established by this section **are tolled** by the administrator's delivery of a notice that a holder is subject to an examination under section 47-30.2-55.”  
N.D. Cent. Code § 47-30.2-39(4)

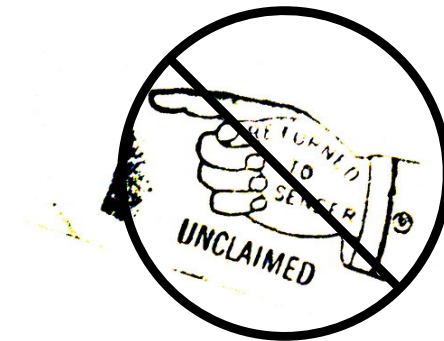
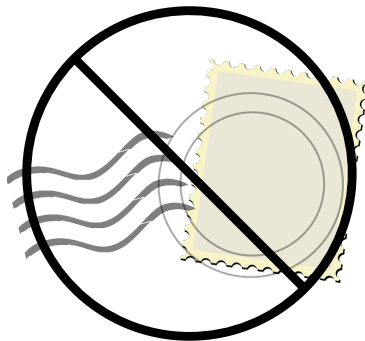
## ➤ Florida Legislation Example:

“The department may not commence an action or proceeding to enforce this chapter . . . more than 10 years after the duty arose. The period of limitation established under this subsection is **tolled** by the earlier of the department's or audit agent's delivery of a notice that a holder is subject to an audit or examination under s. 717.1301 or the holder's written election to enter into an unclaimed property voluntary disclosure agreement.” FL Statutes, § 717.129(2)



# Issue: Consider Eliminating RPO as a Standard

- **Specifics:** Many states require receipt of RPO before the dormancy period can be deemed expired, which may result in property remaining unreportable long after it has been abandoned by its owners
- **Primarily Impacted States:** Multiple states & multiple acts
- **Solution:** Amend relevant provisions to **eliminate RPO** as a requirement and/or provide an alternative dormancy expiration based on last activity



# Issue: Consider Eliminating RPO As a Requirement for Expiration of the Dormancy Period (cont'd)

## ➤ Illinois Legislation Example:

“[A] security is presumed abandoned upon the **earlier of** the following: (1) 3 years after the date a communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered . . . **or** (2) 5 years after the date of the apparent owner's last indication of interest in the security.” 765 ILCS 1026/15-208

## ➤ Florida Legislation Example:

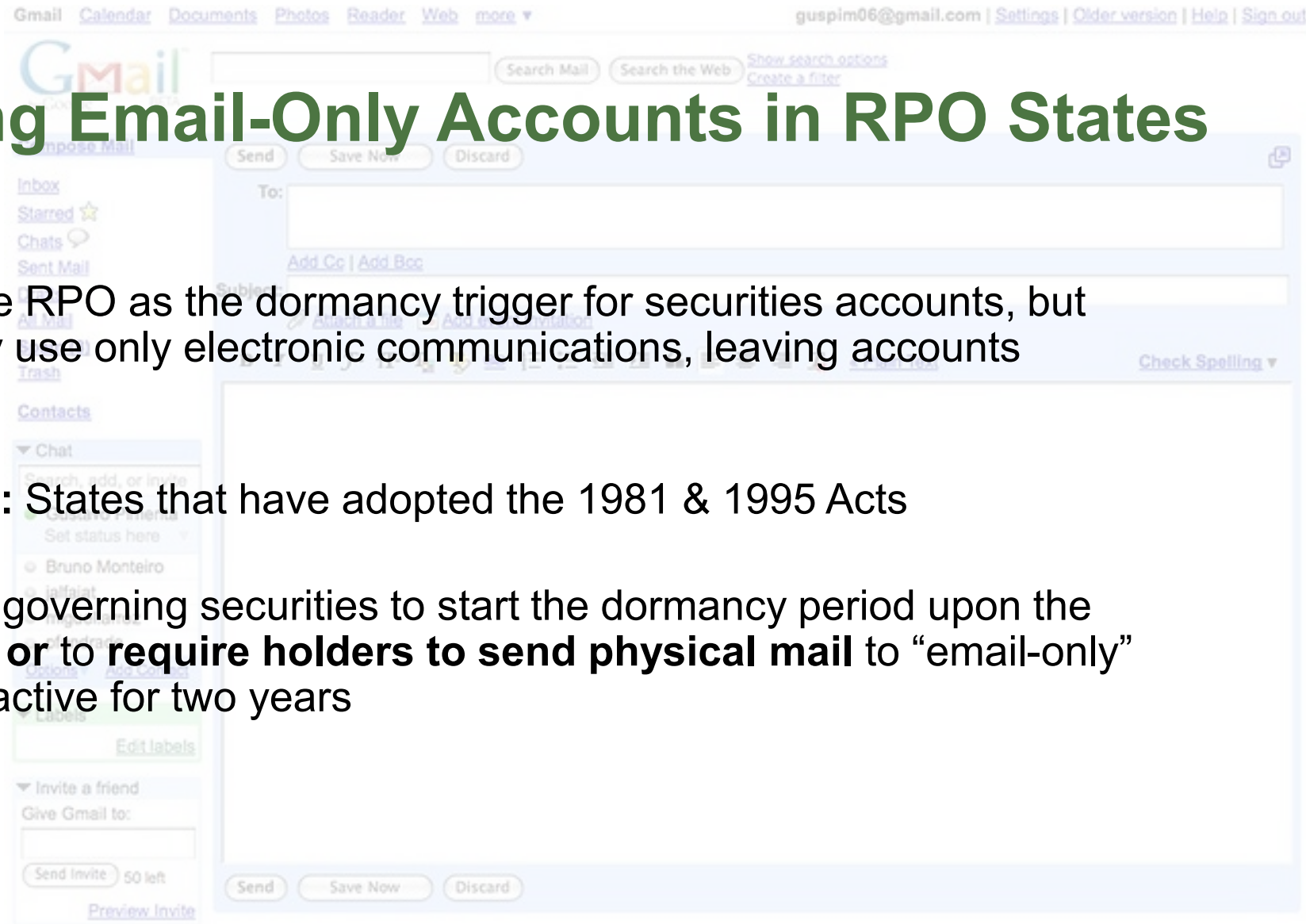
“Stock or other equity interest in a business association is presumed unclaimed on the date of the **earliest** of the following: 1. Three years after the most recent of any owner-generated activity or communication related to the account . . .” FL Statutes, § 717.1101(1)





# Issue: Addressing Email-Only Accounts in RPO States

- **Specifics:** Many states use RPO as the dormancy trigger for securities accounts, but these accounts increasingly use only electronic communications, leaving accounts unreportable indefinitely
- **Primarily Impacted States:** States that have adopted the 1981 & 1995 Acts
- **Solution:** Amend provision governing securities to start the dormancy period upon the last date of **owner activity**, or to **require holders to send physical mail** to “email-only” accounts that have been inactive for two years



# Issue: Addressing Email-Only Accounts in “RPO” States

(cont’d)

## ➤ Florida Legislation Example:

“Stock or other equity interest in a business association is presumed unclaimed on the date of the **earliest** of the following: 1. Three years after the most recent of any **owner-generated activity** or communication related to the account . . .” FL Statutes, § 717.1101(1)

## ➤ RUUPA:

“If the holder does not send communications to the apparent owner of a security by first-class United States mail . . . the holder promptly shall attempt to contact the apparent owner by first-class United States mail if . . . the apparent owner does not respond to the electronic-mail communication not later 30 days after the communication was sent.” RUUPA, § 208(b)



# Issue: Clarifying Dormancy Period of Payroll Cards

- **Specifics:** In many states, it is unclear if dormancy period for payroll cards, which are prepaid cards used by employers to pay employees but are held at financial institutions, should be governed by shorter “wages” period or longer “accounts” period
- **Primarily Impacted States:** States that have adopted the 1981 & 1995 Acts
- **Solution:** Amend the dormancy trigger provisions to clarify that payroll cards should be governed by either the “wages” or the “bank account” dormancy period



# Issue: Clarifying Dormancy Period of Payroll Cards

(cont'd)

## ➤ Illinois Legislation Example:

“[W]ages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, **including amounts held on a payroll card**, [are presumed abandoned] one year after the amount becomes payable . . .” 765 ILCS 1026/15-201

## ➤ Kentucky Legislation Example:

“**A payroll card** or demand, savings, or time deposit account, including a deposit that is automatically renewable, [is presumed abandoned] three (3) years after the maturity of the deposit . . .” KRS 393A.040(5)



# Issue: Clarifying Dormancy Period for CDs

- **Specifics:** The dormancy period for time deposits (CDs) under the 1995 Act is unclear
- **Primarily Impacted States:** States that have enacted the 1995 Act
- **Solution:** Amend § 2(5) to clarify that the “maturity” date reference in the section only applies to time deposit accounts and not to demand or savings accounts

“Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property: . . . (5) a demand, savings, or **matured** time deposit, including a deposit that is automatically renewable, five years after **the earlier of maturity or** the date of the last indication by the owner of interest in the property . . .”





# Issue: Clarifying Dormancy Period for Deposit Accounts

- **Specifics:** The dormancy period for deposit accounts other than CDs under RUUPA is unclear
- **Primarily Impacted States:** States that have enacted RUUPA
- **Solution:** Amend RUUPA, § 201(5) to clarify that the “maturity” date reference in the sections only applies to time deposit accounts and not to demand or savings accounts

“(5) a payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable [is presumed abandoned], three years after the later of maturity, if applicable, of the card or deposit or the owner’s last indication of interest in the card or deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal;”



# Issue: Clarifying Dormancy Period for Deposit Accounts

(cont'd)

## ➤ NAUPA suggested language

(5) financial organization deposits as follows:

- (i) a payroll card, [3 years] after the date of the last indication of interest in the property by the apparent owner;
- (ii) a demand deposit, 3 years after the date of the last indication of interest in the property by the apparent owner;
- (iii) a savings deposit, 3 years after the date of last indication of interest in the property by the apparent owner;
- (iv) a time deposit for which the owner has not consented to automatic renewal of the time deposit, 3 years after the later of maturity or the date of the last indication of interest in the property by the apparent owner;
- (v) an automatically renewable time deposit for which the owner consented to the automatic renewal in a record on file with the holder, 3 years after the date of last indication of interest in the property by the apparent owner, subject to the anti-penalty provisions of Section 603, following the completion of the initial term of the time deposit;



# Issue: Clarifying Dormancy Period for State and Municipal Bonds

- **Specifics:** RUUPA includes two sections, 201(3) and (10), that provide different dormancy periods for state and municipal bonds
- **Primarily Impacted States:** States that have enacted RUUPA
- **Solution:** Amend § 201(3) to clarify that the longer dormancy period of that section is applicable to state or municipal bonds only if the bonds are not held by a governmental entity

“ . . . the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below: . . . (3) a state or municipal bond not subject to subsection (10), bearer bond, or original-issue-discount bond, three years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises . . . ”



# Issue: Establishing DOD as the Dormancy Trigger for Unclaimed Death Benefits

- **Specifics:** Some states have adopted dormancy trigger for unclaimed death benefits based on date of knowledge of death, while some have trigger that holders say is unclear
- **Primarily Impacted States:** States that have adopted RUUPA and various other states
- **Solution:** Amend presumption of abandonment provision for life insurance to explicitly state that the insured's DOD is the dormancy trigger

In *Perdue v. Nationwide*, the WV Supreme Court held that the dormancy period for unclaimed death benefits under WV's Unclaimed Property Act (adopting § 2(e) of 1995 Act) begins to run upon the DOD of the insured, explaining:

“The insurer’s obligation to account for and pay those proceeds [to the Treasurer] is tied instead to the death of the insured (or the insured’s attainment of the limiting age), maturing three years thereafter.”



# Issue: Establishing DOD as the Dormancy Trigger for Unclaimed Death Benefits (cont'd)

## ➤ Illinois Legislation Example

Unclaimed death benefits “owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated” presumed abandoned on “the earlier of: (i) 3 years after the death of the insured; or (ii) 2 years after the insured has attained, or would have attained if living, the limiting age...” 765 ILCS 1026/15-201(8)

## ➤ Florida Legislation Example

“Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, the annuitant, or the retained asset account holder, but property described in paragraph (3)(d) is presumed unclaimed if such property is not claimed for more than 2 years.” FL Statutes, § 717.107(1)





# Issue: Establishing Standards for Unclaimed Funeral/Burial Trust Policies

- **Specifics:** Very few states have a provision in their UP laws specifically addressing when funeral or burial trust funds are considered unclaimed
- **Primarily Impacted States:** Almost all states
- **Solution:** Add a new provision establishing standards for when this type of property is subject to reporting to state as unclaimed property
  - Provision needs to specifically address funds held in trust;
  - Provision needs to consider other relevant state laws governing these type of contracts



# Issue: Establishing Standards for Unclaimed Funeral/Burial Trust Policies (cont'd)

## ➤ Idaho Legislation Example:

“Funds on deposit or held in trust for the prepayment of a funeral or other funeral-related expenses other than burial rights, the **earliest** of:

- (i) Two (2) years after the date of **death** of the beneficiary;
- (ii) One (1) year after the date the beneficiary has attained, or would have attained if living, the **age of one hundred five (105) years** where the holder does not know whether the beneficiary is deceased; or
- (iii) Thirty (30) years **after the contract** for prepayment **was executed.**”

ID Statutes §14-5-201(l)



# Issue: Adding Additional Last Known Address Presumptions for Beneficiaries

- **Specifics:** Most states have a last known address presumption for beneficiaries of life insurance policies. The rationale for this presumption applies to other property types.
- **Primarily Impacted States:** Almost all states
- **Solution:** Revise provision to clearly state that where ownership of property vests in a beneficiary upon the death of the original owner, the last known address of the beneficiary, if unknown, is presumed to be the same as the last known address of the original owner



# Issue: Adding Additional Last Known Address Presumptions for Beneficiaries (cont'd)

## ➤ Florida Legislation Example:

“If a person other than the insured, the annuitant, or the retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the annuitant, or the retained asset account holder according to the records of the company.” Section 717.107(2), F.S.



# Issue: Adding Additional Last Known Address Presumptions for Beneficiaries (cont'd)

## ➤ Illinois Legislation Example:

“The address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined under Section 15-302. The address of the apparent owner of other property where ownership vests in a beneficiary upon the death of the owner is presumed to be the address of the now-deceased owner if the address of the beneficiary is not known by the holder and cannot be determined under Section 15-302.” 765 ILCS 1026/15-301(4)





# Issue: Clarifying Scope & Dormancy Period for Retirement Accounts

- **Specifics:** Under RUUPA, the dormancy trigger no longer tracks the IRS Code's RMD date and the status of Roth IRAs is arguably ambiguous
- **Primarily Impacted States:** States that have enacted RUUPA
- **Solution:** Amend the statute to reflect the updated RMD age and clarify that the provision covers both tax exempt and tax-deferred retirement accounts



# Issue: Clarifying Scope & Dormancy Period for Retirement Accounts (cont'd)

## ➤ Tennessee Legislation Example:

“[P]roperty held in a pension account or retirement account that qualifies for tax deferral under the income tax laws of the United States, or property held in a Roth IRA . . . is presumed abandoned if it is unclaimed by the apparent owner three (3) years after the later of: . . . The date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; provided, however, that for the purpose of determining a holder's reporting obligation pursuant to this section, Roth IRAs are treated like tax deferred retirement accounts . . .” TN Code § 66-29-106



# Issue: Clarifying Exemptions for Gift Cards and Certificates

- **Specifics:** A number of states enacted exemptions for “gift certificates” or “gift cards” many years ago and the application of these exemptions to “open-loop” gift cards that came on the market later has been subject to dispute
- **Primarily Impacted States:** States that have adopted the 1981 & 1995 Acts
- **Solution:** Amend the statute to clarify that the exemption for “gift certificates” or “gift cards” includes only “gift certificates” and “closed-loop” gift cards (redeemable at merchants and affiliates) and not “open-loop” cards (redeemable anywhere card (e.g., Visa, Mastercard) is accepted)
  - States that have adopted RUUPA may want to consider whether bank/money service business-issued “open-loop” gift cards should be exempted



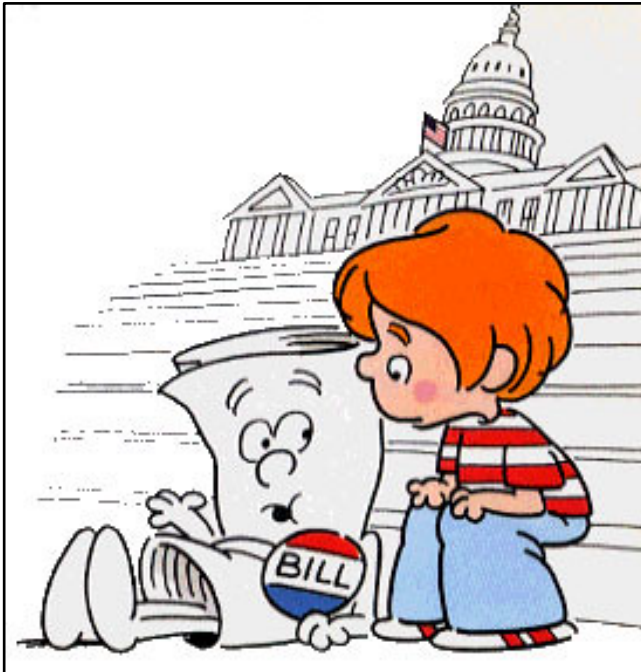
# Other Revisions States Might Consider

- There are numerous other proactive changes that states might want to consider to improve their UP laws
- Some examples include:
  - New provision addressing Health Savings Accounts
  - New provision addressing 529 Accounts and ABLE Accounts (non-RUUPA)
  - New provision providing for accelerated dormancy period for deceased owners (e.g., IL, VT)
  - New provision calling for enhanced due diligence for higher value properties (e.g. NY, NJ, OH)
  - Clarification that use of estimation due to failure to retain records is a penalty (Lyman rule)
  - Clarification of RUUPA exemption for property belonging to owners with last known address in a foreign country
  - Clarification of statements required to be included in due diligence notices sent by holders (See Section 717.117(7), F.S.)



# Navigating the Legislature

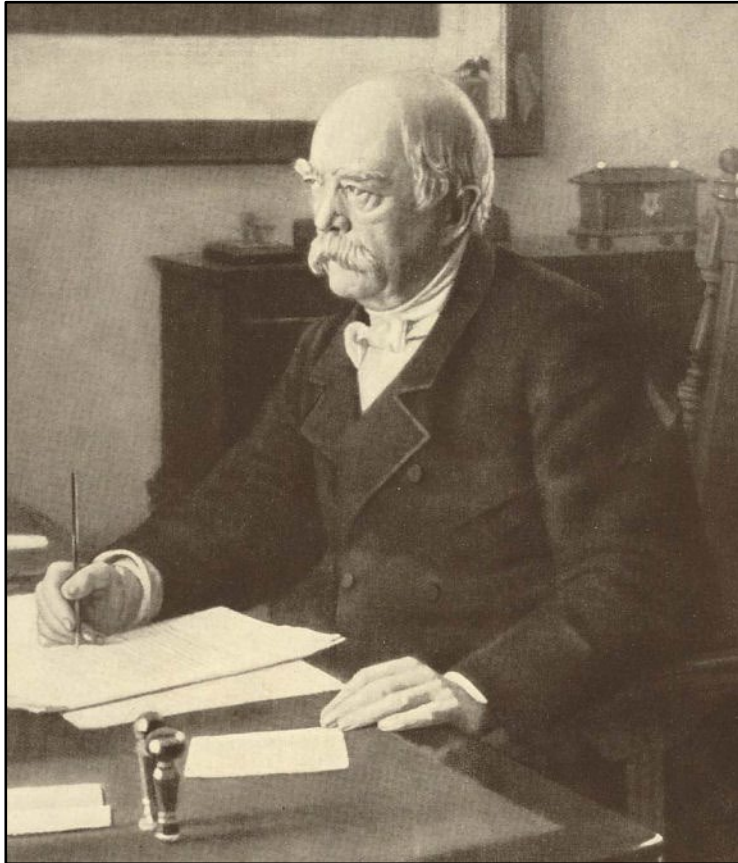
## Myth



## Reality



# Making the Sausage



***“Laws are like sausages;  
it is better not to see  
them being made.”***

- German Chancellor Otto von Bismarck\*

\*Scholars now believe it was more likely the American poet John Godfrey Saxe who said  
“Laws, like sausages, cease to inspire respect in proportion as we know how they are made.”



# Best Practices in Getting Legislative Changes Made

- How to get legislators involved and motivated?
- What legislative committees would legislation be referred to?
- What hurdles to expect?
- What special interest groups will be impacted?
- What can be done by regulation?
- What resources are available from NAUPA and others?





# Questions?

# Thank You!