

ASSEMBLY THIRD READING

AB 2332 (Katra)

As Amended May 4, 2020

Majority vote

SUMMARY:

Establishes procedures for when and how preneed funeral arrangements that are not claimed upon the beneficiary's death should escheat to the state under the Unclaimed Property Law (UPL).

Major Provisions

- 1) Requires, effective January 1, 2021, that funds maintained in a preneed funeral trust (or similar account or plan) escheat to the state under the provisions of the UPL, if, for more than three years after the funds become "payable and distributable," neither the trustor nor the beneficiary corresponds or otherwise indicates an interest in the trust property, as established by the records of the funeral establishment or trustee.
- 2) Deems preneed funeral trust funds to become "payable and distributable" under any of the following circumstances:
 - a) The beneficiary has attained, or would have attained if still living, 105 years of age;
 - b) 45 years have passed since execution of the contract establishing the preneed funeral arrangement;
 - c) The holder has received notification of the death or presumed death of the beneficiary and has not provided the contracted-for funeral goods and services; or
 - d) The preneed funeral trust is an installment trust, the amount due has not been paid in the three preceding years, and neither the trustor nor the beneficiary has communicated with the funeral establishment or the trustee about the trust during that time.
- 3) Deems the funeral establishment that is obligated to provide preneed funeral services under the trust agreement to be the "holder" for purposes of the UPL under (2)(a)-(c), and the trustee to be the "holder" under (2)(d).
- 4) Mandates that, if a funeral establishment is dissolved, closed, or has its license revoked, that the trustee must cause all funds in any corresponding preneed trust account to be returned to the beneficiary, trustor, or their legal representative within 30 days; however, if the trustee is unable to locate these persons, then the trustee must cause these funds to escheat to the state. In neither case may the trustee retain a revocation fee.
- 5) Provides that the escheatment of funds to the State Controller releases the funeral establishment from any obligation to provide goods or services under the original preneed funeral arrangement, and that delivery of funds in a preneed funeral trust to the State Controller relieves the funeral establishment and the trustee of any further liability with respect to those funds.
- 6) Safeguards the funeral establishment if it provides goods or services to the beneficiary of a preneed funeral arrangement post-escheatment, by permitting the funeral establishment to recover escheated funds by submitting appropriate documentation to the State Controller.

COMMENTS:

This bill solves a longstanding problem. Current law permits preneed funeral arrangements: contracts under which a person prepays for the costs of funeral services and merchandise, such as a casket, embalming, burial, and so forth. Prepaid funds are held in trust until the beneficiary of the arrangement passes away; at this point, the principal of the trust, plus any interest, less any fees and taxes, is used to pay the costs of the funeral. Prepayment helps ensure that a person can have the funeral service they desire without causing undue financial burden for their survivors.

A problem arises, however, if the decedent's survivors do not know about the preneed funeral arrangement. For example, the decedent may have made the arrangement many years earlier and neglected to tell their next of kin. The harm, in such a circumstance, is two-fold: the decedent does not receive the benefit of the prepaid funeral arrangement they entered into, and their survivors must bear the costs of whatever funeral arrangement the survivors are able to afford.

Money that is paid in advance and held in trust for a beneficiary's funeral arrangements is a form of intangible property. As such, if the beneficiary passes away, but the prepaid funds are not used for their funeral arrangements, the funds should escheat to the state under the Unclaimed Property Law (UPL). However, California law has lacked a definition of the appropriate triggers for when such funds are deemed payable and distributable, and therefore, eligible for escheatment as unclaimed property. By establishing these triggers, and necessary accompanying procedures, this bill would finally facilitate the escheatment of unclaimed preneed funeral funds to the State Controller's Office, so that the intended beneficiary's heirs might claim them.

While we lack exact data on the number of unclaimed preneed funeral trust accounts, data from the Cemetery and Funeral Bureau shows that:

- 1) As of December 31, 2018, there were 1,094 licensed funeral establishments regulated by the Bureau, and these funeral establishments reported holding \$593 million in preneed contract funds for consumers.
- 2) As of December 31, 2018, the Bureau was aware of 126 funeral establishments that had gone out of business, yet their trustees reported holding and earning income from more than \$16 million in preneed contract trust funds established for this purpose.

With regards to the last point, among this bill's positive features is the establishment of a new mandate that, upon the dissolution, closure, or license revocation of a funeral establishment, all funds in preneed trust accounts associated with that establishment be returned to the beneficiary, trustor, or their legal representative within 30 days; however, if the trustee is unable to locate these persons, then the trustee must cause the funds to escheat to the State Controller's Office.

Summary of the Unclaimed Property Law. The Unclaimed Property Law, enacted in 1958, establishes procedures for the escheatment of unclaimed personal property to the state. Once escheated to the state, the property is in state custody in perpetuity, until the owner (or their heirs) claims the property. Under the UPL, there are three significant parties: the owner, the holder, and the state. The owner is the person with the legal right to the property prior to escheatment. The holder is the person or entity who has possession of the property (such as a bank or other money depository), or a business that has issued a check to an individual or other business, or a company that holds the proceeds of a life insurance policy or annuity. Holders of unclaimed property have no ownership interest in the unclaimed property. (*Bank of America v.*

Cory (1985) 164 Cal. App. 3d 66, 74.) A holder is simply a trustee of the property until it is reclaimed by its owner. However, while the property is in the custody of the holder, the holder generally has the right to use the funds or property as an asset. Once the property is turned over to the state, the state is entitled to keep any interest earned on the property.

The UPL has dual objectives: 1) to protect unknown owners by locating them and restoring their property to them; and 2) to give the state, rather than the holders of unclaimed property, the benefit of its retention. (*State v. Pacific Far East Line, Inc.* (1962) 261 Cal. App. 2d 609, 611; *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal. 2d 462, 463.) The state, through the Controller, acts as the protector of the rights of the true owner. (*Bank of America v. Cory*, supra, at 74.) A person with a legal right to escheated property may file a claim to recover the property from the state. (Code of Civil Procedure Sections 1540 to 1542.) The Controller maintains a website (<http://www.sco.ca.gov>) where members of the public may search a database to discover if the state holds any of their property, and may submit claims to recover the funds or property.

Preneed funeral trust funds are already subject to the UPL. This bill is necessary because beneficiaries of preneed funeral trust arrangements sometimes pass away and their survivors do not take advantage of these arrangements because they are unaware of them. Until now, these preneed funeral trust accounts have lain unclaimed, rather than escheating under the UPL, because there have not been clear guidelines in law to determine when and how they ought to escheat. It is a relatively simple matter for a bank to determine whether there has been account activity on a checking account or a safe deposit box in the last three years. It is a much more difficult thing to know whether the beneficiary of a preneed funeral arrangement is not contacting you. It may be because they have died, or it may be because they are content with their arrangement and have better things to do with their time.

This bill fixes that problem by establishing the following dormancy criteria. Property held in trust under a preneed funeral agreement would be deemed "payable and distributable," under the UPL, if one of these conditions is met:

- 1) The beneficiary has attained, or would have attained if still living, 105 years of age;
- 2) 45 years have passed since execution of the contract establishing the preneed funeral arrangement;
- 3) The holder has received notification of the death or presumed death of the beneficiary and has not provided the contracted-for funeral goods and services; or
- 4) The preneed funeral trust is an installment trust, the amount due has not been paid in the three preceding years, and neither the trustor nor the beneficiary has communicated with the funeral establishment or the trustee about the trust during that time.

Three years after one of these dormancy criteria is satisfied, this bill would require that funds and property in the preneed funeral trust escheat to the state.

Because preneed trust funds are subject to the UPL, this bill will apply to existing preneed funeral arrangements. If this bill were placing a new category of personal property under the UPL, it would likely only apply prospectively: that is, to preneed funeral arrangements entered into on or after January 1, 2021, the first date on which this bill would be in effect if enacted. But preneed funeral trusts, as a species of intangible personal property, are already subject to the UPL. This bill does not alter any existing contractual arrangements between trustors and the

funeral establishments with whom they have contracted for preneed funeral arrangements. California first codified a comprehensive unclaimed property law in 1951; while it is not impossible that some unclaimed preneed funeral trust arrangements are older than this, it seems unlikely that there are very many. Any preneed funeral arrangements entered into after 1951 have always been subject to escheatment and were already governed by the UPL when they were entered into.

Liability after escheatment to the state. This bill provides important protections from liability for funeral establishments and trustees. So long as they follow the procedures outlined in this bill, these entities would be relieved of the liabilities for any unclaimed preneed funeral assets transferred to the state. Moreover, this bill contemplates the possibility that, post-escheatment, a newly-deceased beneficiary's survivors might unexpectedly appear and seek to invoke the benefits of the preneed funeral arrangement. If this were to happen, the funeral establishment would have the option to provide the contracted-for goods and services and obtain reimbursement from the Controller.

According to the Author:

Preneed funeral trust accounts are funds held in trust by funeral establishments for promised funeral merchandise and services to be provided after the beneficiary's death. Usually, the deceased's estate contacts the funeral establishment in order to fulfil the agreement for funeral services. However, in cases where the estate is not aware of the trust and does not fulfill the services promised and paid for, the trust account can lie dormant indefinitely, despite the death or presumed death of the beneficiary. [...] AB 2332 protects consumers and their surviving loved ones by providing a convenient way to locate and claim unused preneed trust fund that could be otherwise held indefinitely.

Arguments in Support:

The State Controller's Office, the bill's sponsor, writes:

This bill would...clarify the party responsible for reporting abandoned trust accounts, outline dormancy triggering events and establish requirements for contact with owners of trust accounts. AB 2332 will enhance consumer protections and create a clear mechanism for people to locate and claim unused preneed funeral trust accounts.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, costs (Unclaimed Property Fund) to the SCO of \$846,000 in Fiscal Year (FY) 2020-21, \$782,000 in FY 2021-22 and \$492,000 in FY 2022-23 and annually thereafter for seven additional staff to distribute eligible preneed funeral trusts. Three of the seven positions are limited term and not ongoing. SCO also estimates a potentially significant increase in revenue to the Unclaimed Property Fund, which may be transferred to the General Fund for claims in perpetuity.

VOTES:

ASM JUDICIARY: 11-0-0

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Maienschein, Obernolte, Reyes

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

UPDATED:

VERSION: May 4, 2020

CONSULTANT: Jith Meganathan / JUD. / (916) 319-2334

FN: 0002894