
**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**
Senator Steven Glazer, Chair
2019 - 2020 Regular

Bill No:	AB 2332	Hearing Date:	August 8, 2020
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Subject: Preneed funeral arrangements: unclaimed property

SUMMARY: Establishes the process for when and how preneed funeral arrangements that are not claimed, as specified, should escheat to the state under the Unclaimed Property Law (UPL).

NOTE: *Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee, as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Committee on Judiciary.*

Existing law:

- 1) Establishes the Cemetery and Funeral Bureau (Bureau) under the Department of Consumer Affairs (DCA) for the licensure and regulation of cemetery brokers, cemetery salespersons, cemetery managers, cemeteries, crematories, crematory managers, cremated remains disposers, and licensed hydrolysis facilities. (Business and Professions Code (BPC) § 7600 *et. seq.*)
- 2) Authorizes the Bureau to inspect the premises in which the business of a funeral establishment, cemetery, or crematory is conducted, where embalming is practiced or, or where human remains are stored. (BPC § 7607)
- 3) Prohibits a licensed funeral establishment or the agents or employees of a funeral establishment, from entering into or soliciting any preneed arrangement, contract, or plan requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms; provided, however, that any payment made or securities deposited, as specified, be released upon the death of the person for whose benefit the trust was established, as specified. (BPC § 7735)

- 4) Requires a funeral establishment to present to the survivor of the decedent or the responsible party a copy of any preneed agreement in its possession, which has been signed and paid for in full, or in part by, or on behalf of the deceased. The funeral establishment may present the copy in person, by certified mail, or by facsimile transmission, as agreed upon by the person with the right to control disposition. A funeral establishment that knowingly fails to present a preneed agreement as required is liable for a civil fine equal to three times the cost of the preneed agreement, or one thousand dollars (\$1,000), whichever is greater. (BPC § 7745)
- 5) Requires tangible and intangible personal property to escheat to the state when specified conditions are met. (Code of Civil Procedure (CCP) § 1518)

This bill:

- 1) Requires all securities purchased by the trustor for deposit in trust and all money received from the trustor for deposit in trust to be placed in trust with a trustee within 30 days of their receipt by the funeral establishment, pursuant to a trust agreement.
- 2) Requires the trust agreement to provide that the trustee deliver the corpus of the trust and any income accrued in the trust, including interest, dividends, and capital gains as follows:
 - a) To the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary, together with satisfactory evidence of the death of the beneficiary, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services, as specified;
 - b) To the trustor or legally appointed representative of the trustor at any time before the funeral establishment has furnished the merchandise and services provided for in the contract if the trustor or the legally appointed representative demands in writing the return of the corpus of the trust, together with any income accrued in the trust, less a revocation fee, as specified; however, that if and when the trustor becomes otherwise eligible, or in order to become eligible for public social services, as specified, the trustor may agree, at the trustor's option, that the trust may be irrevocable in order to avail themselves to specified provisions of the Welfare and Institutions Code.
 - c) In accordance with the UPL, funds held in a preneed funeral trust or similar account or plan escheat to the state if specified conditions are satisfied;
 - d) A funeral establishment report and pay or deliver, or cause the trustee to release for payment or delivery, to the Controller all unclaimed preneed funeral trust funds, as specified, and the amount to be paid or delivered to be the corpus of the trust, together with any income accrued, less a revocation fee, as specified.
- 3) Requires a funeral establishment that intends to cease engaging in business operations because of dissolution, closure, sale, or revocation to transfer its preneed funeral agreements to another funeral establishment only if that successor

funeral establishment is licensed. Prohibits a funeral establishment from transferring its preneed funeral agreements to another funeral establishment that is located 60 or more miles away without prior written approval of the beneficiaries or trustors, or legal representatives of the beneficiaries or trustors, and the trustee.

- 4) Requires all funds, including accrued income, maintained in a preneed funeral trust or similar account or plan held by a trustee for a funeral establishment that has been dissolved, sold, or closed, or had its license revoked, be returned to the beneficiary, the trustor, or the legal representative of either the beneficiary or trustor according to certain requirements. States that if the funeral establishment or trustee is unable to locate the beneficiary or trustor, or the legal representative of either the beneficiary or trustor, or if the beneficiary or trustor, or their legal representative does not provide written direction to the trustee to return the funds to them within six months of receiving the notice, the funeral establishment must report and pay or deliver or cause the trustee to release for payment or delivery all funds together with accrued income and these funds will escheat to the state in accordance with the UPL, except that the revocation fee shall not be retained by the funeral establishment.
- 5) States that if a preneed funeral agreement is canceled because of closure, the funeral establishment may not retain the revocation fee.
- 6) Specifies that the escheatment of preneed funeral trust funds to the Controller will release the funeral establishment from the obligation of furnishing the personal property, funeral merchandise, or services originally arranged in the preneed contract associated with the trust; however, if the funeral establishment provided personal property, or funeral merchandise or services to the beneficiary after the funds escheated, the funeral establishment is entitled to receive the funds upon submission to the Controller of a death certificate and a statement detailing the personal property or funeral services provided.
- 7) States that nothing in this bill or other provisions of specified law requires the escheatment of any funds received by a funeral establishment, cemetery, or other person from property or funeral services provided by a local government.
- 8) Requires the Bureau, by January 1, 2022, to create and post on its internet website, the forms for notification of cessation of business. Requires the Bureau by January 1, 2022, to adopt and post on its internet website, the regulations regarding the type of proof of notice the funeral establishment ceasing operations and the licensed successor funeral establishments are required to provide or retain.
- 9) Requires that funds maintained in a preneed funeral trust or similar account or plan escheat to the state if, for more than three years after the funds become payable and distributable as established from the records of the funeral establishment or trustee, the beneficiary or trustor has not corresponded electronically or in writing concerning the property or otherwise indicated an interest, as evidenced by a memorandum or other record on file with the funeral establishment or trustee.
- 10) Specifies that the corpus of a preneed funeral trust or similar account or plan, together with any income accrued, less a revocation fee not to exceed to the

amount reserved, as specified, becomes payable and distributable under any of the following circumstances:

- a) The beneficiary of the trust attained, or would have attained if living, 105 years of age
 - b) Forty-five years have passed since execution of the preneed funeral agreement;
 - c) The holder received notification of the death or presumed death of the beneficiary and has not provided the contracted funeral merchandise or services; and,
 - d) The preneed funeral trust is a preneed installment trust and the amount due to the funeral establishment from the trustor has not been paid during the preceding three years and neither the trustor nor the beneficiary has communicated with either the funeral establishment or the trustee about the preneed funeral installment during that three-year period.
- 11) States that escheatment of preneed funeral trust funds to the Controller releases the funeral establishment from having to furnish the personal property, funeral merchandise, or services originally arranged in the preneed funeral contract associated with the trust; however, if the funeral establishment provided personal property, or funeral merchandise or services to the beneficiary after the funds escheated, the funeral establishment is entitled to recover the funds upon submission to the controller of a death certificate and a statement detailing the personal property or funeral merchandise or services provided.
- 12) Prohibits a trustee or a funeral establishment from charging the trust, a trustor, or a beneficiary any fees or costs associated with a search or verification, unless the search or verification is part of the trust, as specified.
- 13) Provides that the delivery of the corpus of the trust, and the income accrued to the trust to the funeral establishment, the trustor, the beneficiary, or the Controller, as specified, relieves the trustee of any further liability with regard to those funds.
- 14) Makes the provisions of this bill operable on January 1, 2022.

FISCAL EFFECT: According to the Assembly Committee on Appropriations this bill will result in costs to the SCO of \$846,000 in 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.

COMMENTS:

1. **Purpose.** The California State Controller is the sponsor of this bill. 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.

At the end of 2017, the Department of Consumer Affairs was aware of 130 funeral establishments that had gone out of business with more than \$16 million in preneed contract funds held in trust. As of December 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.

Dormancy triggers are needed to ensure these accounts can escheat to the state where surviving loved ones can conveniently locate them.”

2. Background.

Cemetery and Funeral Bureau. The Bureau licenses and regulates approximately 13,000 businesses and professionals in California in the following categories: funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery salespersons, cremated remains disposers, crematories, crematory managers, cemetery managers, cemetery brokers and the nearly 195 licensed privately-owned cemeteries in the state. The Bureau has the oversight responsibility for both fiduciary and operational activities of its licensing population. The Bureau has statutory authority to enforce the licensing and practice acts in the BPC along with jurisdiction over specified provisions of the Health and Safety Code dealing specifically with human remains and cemetery and crematory provisions. The Bureau does not have authority over cemeteries operated by religious organizations, cities, counties, or cemetery districts, military or Native American tribal organizations.

With respect to the financial aspect of the industry, the Bureau is responsible for the oversight and regulation of preneed funeral trust funds, cemetery endowment care trust funds, and cemetery special care trust funds. With respect to the sale of insurance policies used to fund preneed funeral arrangements, the Department of Insurance regulates the sales of such policies while the Bureau ensures compliance with price disclosures and contract requirements under the Bureau’s jurisdiction. This bill specifically pertains to preneed contracts sold to consumers for the planning of one’s funeral needs.

As noted by the Bureau in its response to the Legislature from issues raised during the 2018-2019 sunset review oversight process, “... *As consumers enter into pre-need arrangements with cemeteries and funeral establishments, the funds for services to be rendered upon their death are put into trusts. As time passes, many consumers end up receiving these services elsewhere. Currently, the burden is on the consumer’s family to return to the cemetery or funeral establishment for a refund of services not-rendered. This proposal would transfer some of that burden to the establishments themselves by mandating they perform their due diligence and return unused monies to the beneficiary or escheat the money to the State in the event that consumers have died and received services elsewhere. Although this issue was not able to be resolved during 2019...*”

Preneed Funeral Arrangements. “Preneed arrangement,” “preneed agreement” or “preneed” is written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need.

The Bureau has the authority and responsibility for the oversight of both the fiduciary and the operational activities of the industries. With regard to the financial aspect of the industry, the Bureau oversees preneed funeral trust funds, cemetery endowment care trust funds, and cemetery special care trust funds. The Department of Insurance regulates the sale of insurance policies that can be used to fund preneed funeral arrangements. However, sellers are required to meet the price disclosure and contract requirements under the Bureau’s jurisdiction. The Bureau has the financial examination authority under BPC § 7613.3 and 16 CCR § 1267 to ensure compliance with the laws, verify accounting and investing practices, and identify funding shortages. Audits can be call for based upon the review of an annual trust report, failure to file a trust report, consumer complaints, or for any reason if the funds appear to be at risk of possible abuse or noncompliance.

BPC § 7745 requires a funeral establishment to present to the survivor of the decedent or the responsible party a copy of any preneed agreement in its possession which has been signed and paid for in full, or in part by, or on behalf of the deceased. BPC § 7685.6 requires a copy of any preneed arrangements to be disclosed prior to drafting any contract for funeral goods or services. The funeral establishment may present the copy in person, by certified mail, or by facsimile transmission, as agreed upon by the person with the right to control disposition. A funeral establishment that knowingly fails to present a preneed agreement as required is liable for a civil fine equal to three times the cost of the preneed agreement, or \$1,000, whichever is greater.

Consumers may purchase, through a preneed contract, caskets, body preparations or funeral services from a funeral service provider and may pay for the goods or services over time or in full at the time of purchase. Currently, funeral establishments are required to deposit the monies into a trust where those funds are held until the services are needed. The requirements for the funeral establishments to follow are specified in BPC §§ 7735 and 7737 and further specified through Bureau regulations. No corpus of the trust may be used for payment of any commission or be used for other expenses or trust administration, or for the payment of taxes on earnings of the trusts.

Prepaid funds are held in trust until the individual passes away; where, the principal of the trust, plus any interest and less any fees and taxes, are used to pay the costs of the funeral.

Instances occur when a person purchases a preneed contract; and the information is not shared with the next of kin or other appropriate parties, either intentionally or unintentionally, and the person passes away and funeral services or products are provided elsewhere. Essentially, the monies spent for those funeral services in the original preneed funeral contract are never provided.

This bill aims to address that issue by ensuring that monies are returned to the consumer, or properly escheated to the state specified under California's UPL. This bill lays out the very specific requirements that must be followed when the monies are being escheated to the Controller through the UPL, including how much of any administrative fees may be obtained. All other consumer monies, including income accrued in the trust, including interest, dividends, and capital gains to escheat to the state in accordance with the provisions of the UPL. This bill would require a funeral establishment to report and pay or deliver all unclaimed preneed funeral trust funds, including the corpus of the trust, together with any income accrued, less a revocation fee, to the Controller, as specified. This bill establishes the trigger for when the funeral establishment should begin the escheatment process which includes the beneficiary of the trust attained or would have attained if living, 105 years or age, or forty-five years have passed since execution of the preneed funeral agreement, the holder receive notification of the death or presumed death of a beneficiary and has not provided the contracted funeral services or merchandise, and the trust is an installment plan and the amount due has not been paid during the three preceding years. If the specifications above are not met, the funeral establishment may continue with holding the monies in the trust, as specified.

Unclaimed Property Law and the Controller of the State of California. According to the State Controller's website, California's UPL requires banks, insurance companies, corporations, and certain other entities to report and submit their customers' property to the State Controller's Office when there has been no activity for a period of time (generally three years). Common types of unclaimed property are bank accounts, stocks, bonds, uncashed checks, insurance benefits, wages, and safe deposit box contents. This bill would ensure the inclusion of preneed funeral contracts.

Under the UPL, as specified in CCP § 1518, it currently requires that all tangible and intangible personal property located in the State that is held in a fiduciary capacity for the benefit of another person, escheat to the State if for more than three years after it becomes payable or distributable, the owner has not done any of the following: 1) increased or decreased the principal; 2) accepted payment of principal or income; 3) corresponded in writing concerning the property; or 4) otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary. This bill would provide the pathway for preneed funeral arrangements to be included as well under the specifications of the UPL.

This bill also addresses the issue of what happens after funds are escheated to the state and a preneed holder seeks to executive services from the contract. 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. Additionally, this bill specifies that when the monies escheat to the Controller, the funeral establishment be released from liability for any unclaimed preneed funeral assets transferred to the state.

What happens when a funeral establishment closes its doors and has preneed agreements? In addition to addressing when preneed trust funds should escheat to the state for those contracts that have been in place more than 45 years or the contract owner would have attained 105, this bill addresses and establishes the

process and procedures for funeral establishments that close their doors and move preneed arrangements to other funeral establishments to help ensure that consumers are consulted and have the opportunity to respond prior to a business sale or consolidation. This bill would require a funeral establishment that intends to cease engaging in business operations for dissolution, closure, sale, or revocation to also send notices to beneficiaries or trustors, or their legal representatives, and trustees of preneed funeral agreements. The bill would require the notices to include specified information depending on whether the funeral establishment plans to transfer or not transfer its agreements to a licensed successor funeral establishment, and provides the mechanism for that contract to be canceled if the beneficiary do not want the contract to be moved to another establishment. The bill would require the notices to be sent on forms developed by the Bureau.

Delayed implementation. This bill has a one-year delayed implementation to ensure the Bureau has time to develop any forms or change any regulations, and provides time for funeral establishments to comply.

3. **Senate Judiciary Committee issues.** This bill touches upon various issues within the jurisdiction of the Senate Judiciary Committee, including, but not limited to, consumer protection, trusts, and the Unclaimed Property Law. The Senate Judiciary Committee has historically tended to favor policies that fortify consumer protections and ensure that beneficiaries of trusts are financially protected. This bill enhances consumer protections by providing a mechanism for preneed funeral trusts to escheat to the state to be held in the name of the beneficiary if a funeral establishment ceases operations, dissolves, is sold, closes, or has its license revoked or if more than 3 years after the funds became payable and distributable the beneficiary or trustor has not corresponded electronically or in writing concerning the property or otherwise indicated an interest, as provided.
4. **Arguments in Support.** The California State Controller writes in support, “Laws regulation preneed funeral trust accounts only ensure the funds for merchandise and services available at the time of death. Funeral establishments are not required to have consistent contact with the owners of record or adequately address handling of abandoned trust accounts. AB 2332 closes this loophole by bringing unclaimed preneed funeral trust accounts under unclaimed property law. This bill would define unclaimed preneed funeral trust accounts as unclaimed property, 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.”

AARP California writes in support, “By ensuring that unused or abandoned preneed funeral trust accounts are escheated to the State Controller’s Office pursuant to the Unclaimed Property Law, AB 2332 will protect consumers by providing a convenient process to locate and recover unused preneed funeral trust funds.”

5. **Prior Related Legislation.**

AB 795 (Irwin, Chapter 309, Statutes of 2019), revises the compensation requirements of a unitrust income distribution method; requires the Cemetery and

Funeral Bureau (Bureau) to review fees and expenses associated with the management of a unitrust fund if the fair market value of an endowment care fund (ECF) falls below a certain level; and exempts the principal of a cemetery authority's trust fund from seizure, as specified.

AB 926 (Irwin, Chapter 750, Statutes of 2017), authorized a cemetery authority to convert its endowment care fund distribution method to a unitrust distribution method, upon application and approval from the Bureau, subject to specific requirements, beginning January 1, 2020.

AB 180 (Bonilla, Chapter, 395 Statutes of 2015), merged the Funeral Directors and Embalmers Law and the Cemetery Act into one Cemetery and Funeral Act and merges the State Funeral Directors and Embalmers Fund and the Cemetery Fund into the combined Cemetery and Funeral Fund, and further requires the Bureau to report to the appropriate policy committees of the Legislature, before January 1, 2020, and conduct a review of endowment care fund requirements, as specified, by January 1, 2018.

SUPPORT AND OPPOSITION:

Support:

California State Controller (sponsor)
AARP California

Opposition:

None on file.

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