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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### **AB 2332 (Kalra) - Preneed funeral arrangements: unclaimed property**

**Version:** August 6, 2020

**Urgency:** No

**Hearing Date:** August 13, 2020

**Policy Vote:** B., P. & E.D. 9 - 0

**Mandate:** Yes

**Consultant:** Janelle Miyashiro

**Bill Summary:** AB 2332 establishes a process for when and how preneed funeral arrangements that are not claimed upon the death of the beneficiary should escheat to the state under the Unclaimed Property Law (UPL).

#### **Fiscal Impact:**

- Ongoing costs in the hundreds of thousands of dollars (Unclaimed Property Fund) for the State Controller's Office (SCO) to distribute preneed funeral trusts escheated to the state. Specifically, the SCO anticipates that it will need 4.0 permanent positions and 3.0 limited term positions beginning in January 2022 at a cost of \$470,000 in Fiscal Year (FY) 2021-22, \$796,000 in FYs 2022-23 through 2023-24, and \$507,000 in FY 2024-25 and ongoing. Additionally, there will generate unknown but potentially significant revenue to the Unclaimed Property Fund, which is transferred to the General Fund to be claimed by and returned to qualified beneficiaries.
- Unknown potentially significant fiscal impact to the Cemetery and Funeral Bureau (Bureau) for oversight related to the financial activities of funeral establishments.
- Estimated information technology cost of \$5,000 for the Office of Information Services to create new enforcement codes and post new forms and regulations. This cost may be absorbable through the redirection of existing resources.

**Background:** The Bureau has the authority and responsibility for oversight of both the fiduciary and the operational activities of the funeral industry. With respect 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.

A "preneed arrangement" or "preneed agreement" 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. Currently, funeral establishments are required to deposit any preneed funeral monies into a trust where those funds are held until the individual passes away; where, the principal of the trust, plus any interest and less any fees and taxes, are used to pay for the costs of the funeral. The Business and Professions Code section 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 that has been signed and paid for in full, or in part by, or on behalf of the deceased.

However, 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.

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..."

Under California's UPL, banks, insurance companies, corporations, and certain other entities are required to report and submit their customers' property to the SCO 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 provide for the inclusion of preneed funeral contracts under the UPL and provide a pathway for these monies to escheat to the State.

**Proposed Law:** This bill:

- Requires all securities purchased and money received by 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.
- 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:
  - To the funeral establishment upon the filing of a certified copy of the death certificate or other satisfactory evidence of the beneficiary's death, together with satisfactory evidence of the beneficiary's death, together with satisfactory evidence that the funeral establishment has furnished the merchandise and services, as specified;
  - To the trustor or the trustor's legally appointed representative at any time before the funeral establishment has furnished the merchandise and services provided for in the contract if the trustor or their 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. Further provides, at the trustor's option, that the trust shall be irrevocable for purposes of social services eligibility pursuant to Welfare and Institutions Code sections 11158 or 12152.

- To the state in accordance with the UPL, if specified conditions are satisfied;
  - To the SCO, all unclaimed preneed funeral trust funds, together with any income accrued, less a revocation fee, as specified.
- Establishes requirements around the notification and transfer of any preneed funeral agreements and funds, including accrued income, between funeral establishments, appropriate parties, and the SCO when a funeral establishment ceases its business operations, as specified.
- 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 their legal representatives, and the trustee.
- Prohibits a funeral establishment from retaining the revocation fee if a preneed funeral agreement is canceled because of closure.
- Specifies that the escheatment of preneed funeral trust funds to the SCO 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.
- Requires the Bureau, by January 1, 2022, to create and post on its internet website, the forms for notification of cessation of business and 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.
- Requires that funds maintained in a preneed funeral trust or similar account or plan escheat to the state under specified circumstances.
- 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:
  - The beneficiary of the trust attained, or would have attained if living, 105 years of age;
  - Forty-five years have passed since execution of the preneed funeral agreement;
  - The holder received notification of the death or presumed death of the beneficiary and has not provided the contracted funeral merchandise or services; or,

- 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.
- 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 SCO, as specified, relieves the trustee of any further liability with regard to those funds.
- Provides a delayed implementation date of January 1, 2022.
- Makes technical changes.

**Staff Comments:** The CFB reports that of its over 1000 funeral establishment licensees, 623 report having preneed trust funds for a total of about \$593 million in consumer funds. Although not all licensed funeral establishments report holding preneed funds, all have the authority to and can start accepting preneed contracts at any time. The CRB Audit Unit will likely experience increased workload to:

- Develop a guidance for and respond to funeral establishments' questions.
- Conduct an analysis of closed or revoked funeral establishments to ensure funds have been returned to the consumer or escheated to the state.
- Conduct more on-site audits to include a review of older preneed contracts.
- Ensure compliance through administrative and disciplinary action.
- Identify preneed consumers who have died and received services elsewhere and to consider the necessity of returning the preneed funds to the beneficiary or escheat the funds.

The CFB currently has no permanent full time auditors to oversee the funeral establishment's preneed trust funds, and does not have the staff resources that are necessary to address the additional workload and implement the mandates of the bill. The CFB reports that it will be requesting a budget augmentation of \$299,000 in FY 2021-2022 and \$283,000 ongoing to fund two Associate Management Auditor positions to address the additional workload that would be needed to implement the provisions of the bill.

The CFB reports absorbable costs associated with the development of regulations.

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