

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 1405 (Smallwood-Cuevas)
Version: April 13, 2026
Hearing Date: April 21, 2026
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Unclaimed personal property: employee benefit plan distributions

DIGEST

This bill makes changes to the Unclaimed Property Law's (UPL) provisions relating to the escheat of employee plan distributions to allow the escheat of forfeited distributions where the employee plan has reversed the forfeiture, and permits the Controller to enter California into a multistate collaborative agreement for ensuring the delivery of escheated employee plan distributions.

EXECUTIVE SUMMARY

The UPL provides for the "escheat" of unclaimed personal property to the state, which is the reversion of property to the state due to the failure of the owner of the property to inherit or claim the property. When property escheats to the state, the state assumes custody of the property in perpetuity, unless and until the owner claims the property. The UPL also sets forth how a holder of unclaimed property must transfer unclaimed property to the state, how the Controller is to provide notice of the unclaimed property to its apparent owner, and how a rightful owner may apply to receive their property (or the monetary value thereof) after it has been transferred to the state.

Federal law, the Employee Retirement Income Security Act of 1974 (ERISA), establishes requirements for employee benefit plans, which includes pension plans and welfare plans managed by employers for their employees. In 1999, a federal district court ruled that a portion of California's UPL relating to the escheat of employee benefit plans was preempted by ERISA. (*See Manufacturers Life Ins. Co. v. East Bay Restaurant and Tavern Retirement Plan* (N.D. Cal. 1999) 57 F.Supp.2d 921.) Specifically, the court held that the state could not take possession of abandoned employee benefit plan distributions if the plan itself established what happens to abandoned distributions (generally, the distributions revert to the plan itself).

This bill clarifies that a plan must report, and the Controller can take possession of, employee benefit plan distributions that have been subject to a forfeiture that has not been reversed by the plan. In such a case, the plan will not have acted to retake control of the funds, so there should be no conflict between the UPL and ERISA. The bill also provides that, to the extent the statute is preempted by ERISA, it should remain operative to the greatest extent permitted under federal law, regulations, and guidance. Finally, the bill authorizes the Controller to enter into a multistate collaborative agreement for the return of unclaimed employee benefit plan distributions.

This bill is sponsored by the author and is supported by the National Association of State Treasurers. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the UPL, which establishes when and how intangible property escheats to the state for the state to take custody of, but not own, unclaimed property. (Code Civ. Proc., pt. 3, tit. 10, ch. 7, §§ 1500 et seq.)
- 2) Provides that property received by the state pursuant to the UPL shall not permanently escheat to the state, and that it is the intent of the Legislature that property owners be reunited with their property. (Code Civ. Proc., § 1501.5.)
- 3) Defines the following relevant terms:
 - a) “Unclaimed property,” unless specifically qualified, means all property (1) which is unclaimed, abandoned, escheated, permanently escheated, or distributed to the state, or (2) which, under any provision of law, will become unclaimed, abandoned, escheated, permanently escheated, or distributed to the state, or (3) to the possession of which the state will become entitled, if not claimed by the person or persons entitled thereto within the time allowed by law, whether or not there has been a judicial determination that such property is unclaimed, abandoned, escheated, permanently escheated, or distributed to the state. (Code Civ. Proc., § 1300(b).)
 - b) “Escheat,” unless specifically qualified, means the vesting in the state of title to property the whereabouts of whose owner is unknown or whose owner is unknown or which a known owner has refused to accept, whether by judicial determination or by operation of law, subject to the right of claimants to appear and claim the escheated property or any portion thereof. (Code Civ. Proc., § 1300(c).)
 - c) “Apparent owner” means the person who appears from the records of the holder to be entitled to property held by the holder. (Code Civ. Proc., § 1501(a).)

- d) “Business organization” means any private corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals, whether or not for profit, including, but not by way of limitation, a banking organization, financial organization, life insurance corporation, and utility. (Code Civ. Proc., § 1501(c).)
 - e) “Digital financial asset” means a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not legal tender, whether or not denominated in legal tender, and does not include specified grants within an affinity rewards program or game platform or securities registered with the United States Securities and Exchange Commission. (Code Civ. Proc., § 1501(d); Fin. Code, § 3102(g).)
 - f) “Employee benefit plan distribution” means any money, life insurance, endowment or annuity policy or proceeds thereof, securities or other intangible property, or any tangible property, distributable to a participant, former participant, or the beneficiary or estate of heirs of a participant or former participant or beneficiary, from a trust or custodial fund established under a plan to provide health and welfare, pension, vacation, severance, retirement benefit, death benefit, stock purchase, profit sharing, employee savings, supplemental unemployment insurance benefits or similar benefits, or which is established under a plan by a business association functioning as or in conjunction with a labor union that receives for distribution residuals on behalf of employees working under collective-bargaining agreements. (Code Civ. Proc., § 1501(e).)
 - g) “Holder” means any person in possession of property subject to the UPL belonging to another, or who is a trustee in case of a trust, or is indebted to another on an obligation subject to the UPL. (Code Civ. Proc., § 1501(g).)
 - h) “Owner” means a depositor in case of a deposit, a beneficiary in case of a trust, or a creditor, claimant, or payee in case of any other choses in action, or any person having a legal or equitable interest in property subject to the UPL, or their legal representative. (Code Civ. Proc., § 1501(i).)
 - i) “Person” means any individual, business association, government or governmental subdivision or agency, two or more persons having a joint or common interest, or any other legal or commercial entity, whether that person is acting in their own right or in a representative fiduciary capacity. (Code Civ. Proc., § 1501(j).)
- 4) Establishes a default rule that all tangible and intangible personal property, except for property types otherwise specified, that is held or owing in the ordinary course of the holder’s business and has remained unclaimed by the owner for more than three years after it became payable or distributable, escheats to the state.
- a) Except where a statute establishes a different notice requirement for specific types of property, notice must be given as provided when the property is valued at \$50 or more. The holder shall make reasonable efforts to notify the owner by mail or, if the owner has consented to electronic delivery,

- electronically; the notice shall be mailed not fewer than 6 and not more than 12 months before the time when the property becomes reportable to the Controller as unclaimed.
- b) The notice must be accompanied by a form which the owner can return to the holder to indicate that they are active; if the owner signs and returns the form, the escheat period recommences.
 - c) A holder can provide a telephone number or electronic means for the owner to contact them in lieu of the form. (Code Civ. Proc., § 1520.)
- 5) Provides that all employee benefit plan distributions and any income or other increment thereon escheats to the state if the owner has not, within three years after it becomes payable or distributable, accepted the distribution, corresponded in writing concerning the distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which the trust or fund is established.
- a) “Fiduciary” means any person exercising any power, authority, or responsibility of management or distribution with respect to any money or other property of a retirement system or plan.
 - b) “Administrator” means the person specifically so designated by the plan, trust agreement, contract, or other instrument under which the retirement system or plan is operated, or if none is designated, the employer. (Code Civ. Proc., § 1521(a).)
- 6) Provides that, except as provided in 7), an employee benefit plan distribution and any income or other increment thereon shall not escheat to this state if, at the time the distribution shall become payable to a participant in an employee benefit plan, the plan contains a provision for forfeiture or expressly authorizes the administrator to declare a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time specified in the plan, and the trust or fund established under the plan has not terminated prior to the date on which the distribution would become forfeitable in accordance with the provision. (Code Civ. Proc., § 1521(b).)
- 7) Provides that a participant entitled to an employee plan distribution in the form of residuals shall be relieved from a forfeiture declared under 6) upon the claim of making an error. (Code Civ. Proc., § 1521(c).)

This bill:

- 1) Adds, as a required condition for an employee benefit distribution or income or increment thereon not to escheat to the state, the requirement that the distribution has been subjected to a forfeiture that has not been reversed by the plan.
- 2) Provides that, to the extent the court determines that the UPL statute governing the escheat of employee benefit plan distributions is preempted, or otherwise limited,

by ERISA or any other federal law, the statute shall remain operative in the manner and to the extent allowed pursuant to any federal statute, regulations, or guidance governing this matter that are adopted by the United States Department of Labor.

- 3) Provides that, if the Controller finds it necessary, the Controller may enter into a multistate collaborative agreement, or other contract, for the purpose of ensuring that any property delivered to this state that may be subject to the UPL employee benefit plan escheat statute complies with federal law.
- 4) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

SB 1405 is about something simple but essential: helping Californians reclaim the retirement money they earned. Too often, seniors lose track of retirement accounts after a lifetime of work. Each year, millions of dollars in required retirement distributions go unclaimed – often because people move, change jobs, or lose contact with plan administrators. Once these checks go uncashed, the funds cannot be reinvested and remain out of reach of the people who need them. At the same time, retirement plans face costly, ongoing efforts to locate missing beneficiaries, with no efficient way to return these funds.

SB 1405 allows California to participate in the States' Unclaimed Retirement Clearinghouse, enabling unclaimed funds to be transferred to the State Controller's Office and returned to rightful owners through the Unclaimed Property Program. This bill helps restore financial security, dignity, and peace of mind for California's seniors by reconnecting them with their hard-earned savings.

2. Background on the UPL

The UPL provides for the "escheat" of unclaimed personal property to the state, which is the reversion of property to the state due to the failure of the owner of the property to inherit or claim the property.¹ "The UPL is not a permanent or 'true' escheat statute" because it does not transfer legal ownership of the property to the state.² Instead, the

¹ Code Civ. Proc., pt. 3, tit. 10, ch. 7, §§ 1500 et seq.

² *Azure Limited v. I-Flow Corp.* (2009) 46 Cal.4th 1323, 1328 (some internal quotation marks removed); Civ. Code, § 1501.5.

state assumes custody of the property in perpetuity unless and until the owner claims the property, at which point the Controller must return the property to the owner.³

There are three significant players under the UPL: the owner, the holder, and the state. The “owner” is the person to whom the property actually belongs.⁴ The “holder” is the person who has possession of the property, such as a bank holding funds or a brokerage account holding securities.⁵ Holders of unclaimed property have no ownership interest in the unclaimed property; they are simply trustees of the property while the property is in their possession.⁶ The third party is the state, which assumes custody of unclaimed property from the holder. The state’s custody has two purposes: by assuming custody of unclaimed property, the state can protect the owner’s interests; and, less altruistically, custody of unclaimed property allows the state to benefit from the use of the unclaimed property (generally in the form of interest or other investment income) until the rightful owner comes along.⁷

The UPL establishes procedures to be followed when property goes unclaimed and custody reverts to the state.⁸ Most property escheats to the state after three years of inactivity; the nature of the inactivity varies based on the type of property in question.⁹ When the requisite inactivity period runs, the holder must file an annual report on unclaimed property and turn the property over to the Controller.¹⁰ Assuming the Controller does not decline to take custody of the property,¹¹ the holder then must transfer the property to the Controller within a specified time.¹² The Controller must attempt to notify the apparent owner that it is holding property on the apparent owner’s behalf, including by mailing a notice to the apparent owner where the apparent owner’s address is listed in the report or can be obtained from the FTB.¹³

Once the Controller takes control of property, the Controller generally must sell the property for its fair market value and hold onto the proceeds.¹⁴ The UPL gives the Controller broad discretion to determine whether a price represents the property’s fair market value, except that for stocks traded on a major exchange or otherwise over the counter, the Controller must sell the stocks at the prevailing prices in the relevant market.¹⁵ The Controller then holds the proceeds (or other property) in perpetuity,

³ *Id.*, § 1540.

⁴ *Id.*, § 1501(i).

⁵ *Id.*, § 1501(g).

⁶ *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 74

⁷ *Azure Limited, supra*, at p. 1328.

⁸ Code Civ. Proc., § 1520.

⁹ *Id.*, §§ 1510-1519.5.

¹⁰ *Id.*, § 1530.

¹¹ *Id.*, § 1533.

¹² *Id.*, § 1532.

¹³ *Id.*, § 1531.

¹⁴ *Id.*, § 1563.

¹⁵ *Id.*, § 1563(b).

unless and until the rightful owner makes a claim for its return.¹⁶ The Controller retains the interest or other income on property or moneys that accrue after the state takes custody of the property.¹⁷ A claimant who recovers property from the Controller is not entitled to interest on their property for the period it was held by the Controller.¹⁸

3. The conflict between ERISA and the UPL's application to employee benefit plans that include provisions for the reversion of unclaimed funds

The UPL provides for the escheat of employee benefit plan distributions after they have been abandoned by the owner for three years.¹⁹ An employee benefit plan includes any moneys or property distributable to a participant, former participant, or their heirs or beneficiaries through a plan to provide health and welfare, pension, vacation, severance, retirement benefits, death benefits, stock purchases, profit sharing, employee savings, unemployment insurance, or other similar benefit that is established by the employer for the benefit of employees.²⁰

ERISA is the federal law governing employee benefit plans.²¹ "ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans."²² ERISA expressly preempts state laws that "relate to" employee benefit plans.²³ This preemption clause is "deliberately expansive, and [is] designed to 'establish pension plan regulation as exclusively a federal concern.'"²⁴

In 1999, the United States District Court for the Northern District of California ruled in *Manufacturers Life Ins. Co. v. East Bay Restaurant and Tavern Retirement Plan* that the UPL's provisions for the escheat of employee benefit plan distributions was preempted by ERISA to the extent the UPL required the escheat of funds which, under the terms of the plan, would be returned to the plan.²⁵ In other words, where the benefit plan itself included terms for the disposition of forfeited assets, the UPL could not override the plan's terms and take possession of those assets instead. The district court did, however, affirm that "[e]scheat of abandoned property is...an area of traditional state authority" and that state laws "which are of general application, often traditional

¹⁶ *Id.*, §§ 1540, 1563.

¹⁷ *Id.*, § 1562.

¹⁸ *Id.*, § 1540.

¹⁹ *Id.*, § 1521.

²⁰ *Id.*, § 1501(e).

²¹ See 29 U.S.C. §§ 1001 et seq.

²² *Shaw v. Delta Air Lines* (1983) 463 U.S. 85, 90.

²³ 29 U.S.C. § 1144.

²⁴ *Pilot Life Ins. Co. v. Dedeaux* (1987) 481 U.S. 1, 45-46.

²⁵ *Manufacturers Life Ins. Co. v. East Bay Restaurant and Tavern Retirement Plan* (N.D. Cal. 1999) 57 F.Supp.2d 921, 924.

exercises of state power or regulatory authority, and whose effect on ERISA plans are incidental are generally not preempted.”²⁶

4. This bill clarifies the scope of the UPL as it applies to employee benefit plan distributions and authorizes the Controller to join an interstate agreement for the purpose of ensuring that escheated plan distributions are delivered to their rightful owner

According to the author and bill’s sponsor, State Controller Malia M. Cohen, many employee benefit plans do not want to hold onto funds that have gone unclaimed by beneficiaries. In such cases, the reverted funds cannot be reinvested, and the plan is responsible for attempting to find the missing beneficiary, resulting in net losses to the plan.

This bill allows plans to report unclaimed benefit plan distributions to the Controller, and for such moneys to escheat to the state, when the plan does not provide for the disposition of unclaimed distributions. This exception appears consistent with ERISA and the court’s order in *Manufacturers Life Ins. Co. v. East Bay Restaurant and Tavern Retirement Plan*, because it expressly applies only in cases where the plan is silent, and so cannot conflict with the plan’s own terms. The bill also provides that, to the extent the statute is held to be preempted by ERISA, it should remain operative to the extent permitted under federal statute, regulation, or guidance.

Finally, this bill permits the Controller to enter into a multistate collaborative agreement for the purpose of ensuring that plan distributions that escheat to the state complies with federal law. This provision is intended to ensure that the Controller has the necessary authority to join the States’ Unclaimed Retirement Clearinghouse (SURCH). SURCH’s portal allows participating states’ records of escheated employee distribution plans to be included in the unclaimed property records of other participating states; if California were allowed to participate in SURCH, then all of the employee benefit plan distributions held by the Controller would be listed in the unclaimed property records of other participating states. Listing plan distributions held by the Controller on other states’ unclaimed property websites should increase the likelihood of reuniting the distributions with the people who earned them.

SUPPORT

National Association of State Treasurers

OPPOSITION

None received

²⁶ *Id.* at p. 923.

RELATED LEGISLATION

Pending legislation:

SB 1066 (Niello, 2026) extends the period before most property escheats under the UPL to seven years and requires the Controller to hold most escheated property in its original form. SB 1016 is pending before this Committee and is set to be heard on the same date as this bill.

AB 2335 (Valencia, 2026) requires the Controller, when digital assets are transferred to the Controller under the UPL, to hold the assets as high-quality digital assets, as specified. AB 2335 is pending before the Assembly Banking and Finance Committee.

AB 1447 (Gipson, 2025) amends the Unclaimed Property Law (UPL) to clarify when the State Controller must provide notice by mail to an apparent owner that the apparent owner appears to be entitled to property in excess of \$50 that escheated to the Controller under the UPL. AB 1447 is pending on the Senate Floor.

Prior legislation:

SB 822 (Becker, Ch. 660, Stats. 2025) amended the UPL to provide when and how digital financial assets, as defined, escheat to the state.

AB 2280 (Reyes, Ch. 282, Stats. 2022) authorized the Controller to establish the California Voluntary Compliance Program, for the voluntary compliance of holders for the purpose of resolving unclaimed property that is due and owing to the state under the UPL.

SB 301 (Min, Ch. 103, Stats. 2021) lowered the amount under the UPL at which point a transfer of unclaimed cash must be paid to the Controller via electronic transfer, from \$20,000 to \$2,000.
