
CONSENT

Bill No: SB 1405
Author: Smallwood-Cuevas (D)
Amended: 4/13/26
Vote: 21

SENATE JUDICIARY COMMITTEE: 13-0, 4/21/26

AYES: Umberg, Niello, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern,
Valladares, Wahab, Weber Pierson, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Unclaimed personal property: employee benefit plan distributions

SOURCE: Author

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.

ANALYSIS:

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 Civil Procedure (Civ. Proc.), pt. 3, Title 10, Chapter 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) “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).)
- d) “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).)
- e) “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) 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).)
- 5) Provides that, except as provided in 6), 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).)
- 6) Provides that a participant entitled to an employee plan distribution in the form of residuals shall be relieved from a forfeiture declared under 5) 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

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/4/26)

National Association of State Treasurers

OPPOSITION: (Verified 5/4/26)

None received

ARGUMENTS IN SUPPORT: According to the National Association of State Treasurers:

Each year, a growing volume of required minimum distributions and other retirement plan checks go uncashed because participants cannot be located, an issue estimated to exceed \$100 million annually nationwide. Although federal policy has evolved to discourage forfeitures and permit voluntary transfer of uncashed distributions to state unclaimed property programs, California's statute currently prevents the State Controller from accepting certain unclaimed retirement checks, even when no forfeiture has occurred.

SB 1405 provides a practical and legally sound solution. By allowing voluntary reporting of uncashed retirement distributions that have not been forfeited, clarifying application consistent with ERISA, and authorizing participation in the States' Unclaimed Retirement Clearing House (SURCH), the bill aligns California law with current federal guidance and best practices.

SURCH offers a streamlined, multi-state reporting mechanism approved by the U.S. Department of Labor, reducing administrative burden for retirement plans while improving outcomes for participants. Importantly, this legislation strengthens consumer protection by ensuring retirement funds are safeguarded and returned to their rightful owners.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
5/5/26 15:55:50

**** END ****