

SENATE THIRD READING
SB 1405 (Smallwood-Cuevas)
As Amended April 13, 2026
Majority vote

SUMMARY

Makes changes to the unclaimed property statute as it relates to employee benefit plan distributions and permits the State Controller to enter California into a multistate collaborative agreement for ensuring the delivery of escheated employee plan distributions.

Major Provisions

- 1) Adds, as a required condition for an employee benefit distribution or income or increment 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 that a court determines the Unclaimed Property Law statute governing the escheat of employee benefit plan distributions to be inoperative, preempted, or otherwise limited, in whole or in part, by the federal Employee Retirement Income Security Act (ERISA), or any other federal law, the statute will be 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) Specifies 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 employee benefit plan distribution delivered to this state that may be subject to escheatment complies with federal law.

COMMENTS

According to the author and the bill's sponsor, State Controller Malia Cohen, each year numerous employee retirement and other benefit distributions, including uncashed retirement checks, go unclaimed because participants cannot be located. Estimates from industry experts suggest that the value of uncashed retirement checks likely exceeds \$100 million per year. (Advisory Council on Employee Welfare and Pension Benefit Plans, *Voluntary Transfer of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs*, (Nov. 2019) p. 12, available at: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/employee-advisory-council-voluntary-transfers-uncashed-checks.pdf>.) While a central clearinghouse now exists to facilitate the reporting of these kinds of distributions to state unclaimed property programs, it is unclear whether the State Controller possesses the authority to participate in this multi-state initiative. Additionally, existing law precludes certain employee benefit plan distributions from escheating to the state, leaving many Californians without access to their promised benefits.

To allow the reporting of these unclaimed distributions and facilitate their return to the rightful owners through the State Controller's unclaimed property program, the author introduced this measure.

The Unclaimed Property Law (UPL). California's Unclaimed Property Law (UPL) governs the process by which unclaimed personal property escheats to the state. The policy rationale behind the law is twofold: to reunite owners with their property and, pending such reunion, to allow the state to utilize the property for the public benefit. Under the UPL holders of abandoned property must transfer the property to the state controller, if the property remains unclaimed by its owner for a statutory dormancy period—usually three years. Once in the controller's custody, the property is either retained (in the case of tangible property) or liquidated and deposited in the Unclaimed Property Fund. An owner can reclaim the property from the controller at any time, and if the owner believes a claim was improperly denied or if the claim remains unresolved within 180 days of filing, the owner can bring a claim against the controller in superior court. The UPL applies to a wide range of intangible personal property, including employee benefit plan distributions (e.g., retirement checks).

The problem of unclaimed retirement benefits. As mentioned above, retirement checks go uncashed every year because employee benefit plans are unable to locate participants and beneficiaries. In recent years, the United States Department of Labor has taken the position that, as part of a plan's fiduciary duties, a plan must perform ongoing searches for missing participants and beneficiaries, even where the participants or beneficiary's benefits have been forfeited to the plan. (See United States Department of Labor, *Missing Participants – Best Practices for Pension Plans*, (Jan. 12, 2021) available at: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans>.) At the same time, current state law does not allow certain employee benefit plan distributions to be escheated to the state (See Code of Civil Procedure Section 1521(b)), and the Department of Labor has consistently taken the position that state unclaimed property laws *requiring* plans to remit these kinds of distributions to the state are preempted by the federal Employee Retirement Income Security Act (ERISA). (See United States Department of Labor, *Advisory Opinion 94-41A*, (Dec. 7, 1994), available at: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/1994-41a>.) This dynamic has potentially led to some confusion regarding whether voluntary transfers to these programs are appropriate.

As part of addressing the growing problem of uncashed retirement checks, the ERISA Advisory Council recommended that the Department of Labor issue guidance stating, among other things, that a "plan fiduciary will be viewed as having satisfied its fiduciary responsibility to the extent the fiduciary transfers amounts attributable to a Missing Participant's uncashed check to a state unclaimed property program that meets minimum standards." (Advisory Council on Employee Welfare and Pension Benefit Plans, *Voluntary Transfer of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs*, (Nov. 2019) p. 7, available at: <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/employee-advisory-council-voluntary-transfers-uncashed-checks.pdf>.) The Advisory Council's report specifically noted that unclaimed property programs have an improved chance of helping missing participants be reunited with their retirement checks.

In January 2025, the Department of Labor issued a Field Assistance Bulletin which essentially adopted the Council's recommendation. The Bulletin specified that the department would not pursue violations of the ERISA statute setting forth a plan's fiduciary obligations, if plans voluntarily transferred retirement benefit payments owed to missing participants or beneficiaries from an ongoing plan to a state unclaimed property fund, if certain conditions are met. (United States Department of Labor, *Field Assistance Bulletin No. 2025-01*, (Jan. 14, 2025) available at:

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2025-01>.) Pending further guidance, plans can transfer these distributions to unclaimed property funds without fear of enforcement action from the department. (*Id.*) To do so, the value of the nonforfeitable accrued benefit must be \$1,000 or less and the plan must comply with the following conditions:

- 1) The plan fiduciary determines that the transfer to a state unclaimed property fund is a prudent destination for the participant's or beneficiary's retirement benefit payments;
- 2) The plan fiduciary has implemented a prudent program to find missing participants consistent with the Department of Labor's Best Practices for Pension Plans, and nevertheless has been unable to locate the participant or beneficiary;
- 3) The plan selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary;
- 4) The plan's summary plan description explains that retirement benefit payments of missing participants or beneficiaries may be transferred to an eligible state fund and identifies the name, address, and phone number of a plan contact for further information concerning the eligible state funds; and
- 5) The state unclaimed property fund qualifies as an eligible state fund. (*Id.*)

To be an "eligible state fund," Department of Labor guidance specifies that the state unclaimed property fund must participate in the States's Unclaimed Property Clearing House (SURCH), as operated by the National Association of State Treasurers, among other things. (*Id.*)

States' Unclaimed Retirement Clearing House. As part of its 2019 report, the ERISA Advisory Council noted that while many countries maintain central repositories or clearinghouses for missing or unresponsive participants, the United States lacked such options. (Advisory Council on Employee Welfare and Pension Benefit Plans, *supra*, at p. 13.) Accordingly, the National Association of State Treasurers and its affiliated network, the National Association of Unclaimed Property Administrators, formed the States' Unclaimed Retirement Clearing House (SURCH). SURCH is designed to permit a retirement plan to report and remit uncashed distribution checks to all participating states contemporaneously. SURCH then distributes the reporting data and funds to the respective state unclaimed property programs.

California's unclaimed property fund is currently not participating in SURCH, and according to the sponsor, it is unclear under existing state law whether the state controller has the authority to do so.

This bill simply permits the controller to participate in the SURCH initiative, by specifying that the controller is allowed to enter into a multistate collaborative agreement, or other contract, for the purpose of ensuring that any employee benefit distributions that may be delivered to the state pursuant to the unclaimed property statute, are delivered in compliance with federal law. Should California become a participating state, plans will be able to remit unclaimed retirement checks to the state's unclaimed property fund, and those will appear in the office's unclaimed property listings, alongside other properties. Individuals will be able to search these listings and potentially become reunited with their lost funds.

To that end, this bill also amends state law to allow states to report certain employee benefit plan distributions to the state controller. Right now, employee benefit plan distributions cannot escheat to the state if: 1) at the time the distribution becomes payable, the plan contains a provision for forfeiture or expressly authorizes the administrator to declare a forfeiture of a distribution under specified circumstances, and 2) the trust or fund established under the plan has not terminated before the distribution became forfeitable. (Code of Civil Procedure Section 1521 (b).) This bill adds a third required condition to the above list – that the distribution has been subjected to a forfeiture that has *not* been reversed by the plan (i.e., where the plan retains the distribution as an asset). Under the bill, a distribution cannot escheat to the state, only if all of those conditions are met.

By adding this condition, the bill clarifies that the state controller can accept employee benefit plan distributions in cases where, for example, an uncashed retirement check has not in fact been forfeited to a plan. While a district court has previously held that California's UPL was preempted where the state "wishes to seize funds to which the ERISA plan has a contractual right," the court did not opine on whether the UPL would be preempted if a plan has not retained the benefit as a plan asset. (*Manufacturers Life Ins. Co. v. East Bay Restaurant and Tavern Retirement Plan* (N.D. Cal. 1999) 57 F.Supp.2d 921, 924.) Because the bill specifically addresses distributions that have not been retaken by the plan following forfeiture, it arguably does not conflict with the district court's decision, and thereby, ERISA. Further, 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.

Taken together, these provisions should allow more unclaimed retirement checks to be reported to the state's unclaimed property fund, increasing the likelihood that participants and beneficiaries will be reunited with their hard-earned retirement savings.

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.

Arguments in Support

The National Association of Treasurers believes this bill represents "a thoughtful approach to strengthening consumer protections while providing needed clarity for plan administrators navigating federal and state requirements." Additionally, they state:

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.

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor and absorbable costs to the State Controller's Office.

VOTES

SENATE FLOOR: 36-0-4

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Grayson, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Alvarado-Gil, Gonzalez, Grove, Niello

ASM JUDICIARY: 12-0-0

YES: Kalra, Macedo, Bauer-Kahan, Bryan, Connolly, Dixon, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

ASM APPROPRIATIONS: 15-0-0

YES: Wicks, Hoover, Arambula, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta, Tangipa

UPDATED

VERSION: April 13, 2026

CONSULTANT: Kristian Wright / JUD. / (916) 319-2334

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