Date of Hearing: July 14, 2025

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Avelino Valencia, Chair
SB 822 (Becker) – As Amended June 23, 2025

SENATE VOTE: 38-0

SUBJECT: Unclaimed property: digital financial assets

SUMMARY: Clarifies California's Unclaimed Property Law to expressly include unclaimed digital financial assets.

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 of Civil Procedure Section 1500 et seq. All further statutory references are to the Code of Civil Procedure, unless otherwise specified.)

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. (Section 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. (Section 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. (Section 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. (Section 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. (Section 1501 (c).)

e. "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. (Section 1501 (e).)

f. "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or 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. (Section 1501 (g).)

g. "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. (Section 1501 (h).)

4. Provides that all tangible personal property and all intangible personal property, except as 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. (Section 1520.)

5. Provides that, unless otherwise provided, intangible personal property escheats to this state, as provided, when the following conditions are met:

    a. The last known address, as shown on the records of the holder, of the apparent owner is in this state.

    b. No address of the apparent owner appears on the records of the holder and (1) the last known address of the apparent owner is in the state; (2) the holder is domiciled in this state and has not previously paid the property to the state of the last known address of the apparent owner; or (3) the holder is a government or governmental subdivision of the state and has not previously paid the property to the state of the last known address of the apparent owner.

c. The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat of such property and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state.

d. The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state. (Section 1510.)

6. Establishes the specific conditions under which intangible or personal property held by a business association escheats to the state; intangible property held by a business association generally escheats after three years of specified inactivity by the owner, except as specified. (Sections 1513-1521.)

7. Requires a holder of funds or other personal property to report to the Controller, on a form prescribed by the Controller, specified information relating to the property and the holder. (Sections 1530.)

8. Requires the holder, no sooner than 7 months and no later than 7 months and 15 days after filing the report in #7, to pay or deliver to the Controller all escheated property specified in the report.

    a. Any payment of unclaimed cash in an amount of at least $2,000 shall be made by electronic funds transfer.

    b. If a person establishes their right to receive the property specified in the report before it is delivered to the Controller, the holder shall instead file a report with the Controller containing information regarding the returned property. (Section 1532.)

9. Permits the Controller, if they determine, in their discretion, that it is not in the interest of the state to take custody of tangible personal property, to notify the holder within 120 days of the report that the state will not be taking custody of the property. (Section 1533.)

10. Provides that any person, excluding another state, who claims to have been the owner of property paid or delivered to the Controller under the UPL may file a claim to the property or to the net proceeds from its sale. There is no time limit in which an owner may make a claim.

    a. "Owner" means the person who had a legal right to the property before its escheat, their heirs or personal representative, their guardian or conservator, or a public administrator acting pursuant to the Probate Code; and also includes specified dissolved organizations.

    b. The Controller shall consider each claim within 180 days after it is filed to determine if the claimant is the owner.

    c. If the Controller denies the claim, notice must be given in writing.

d. If the Controller fails to make a decision on the claim within 180 days of filing, or denies the claim in whole or in part, the claimant may file an action for review in the superior court. (Sections 1540, 1541.)

11. Provides that, when the Controller takes custody of unclaimed securities listed on an established stock exchange, the Controller shall sell the securities at the prevailing prices on that exchange; other securities may be sold over the counter at prevailing prices or by any other method that the Controller may determine to be advisable. A person making a valid claim for the securities shall be entitled to receive the securities as long as they remain in the custody of the Controller; if they have been sold, the person shall be entitled to receive the net proceeds received by the Controller in the sale. (Section 1563.)

12. Defines "digital financial asset" as 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; but "digital financial asset" does not include any of the following:

    a. A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank or credit union credit, or a digital financial asset.

    b. A digital representation of value issued on or behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

    c. A security registered with or exempt from registration with the United States Securities and Exchange Commission or a security qualified with or exempt from qualifications with the DFPI. (Financial Code Section 3102 (g).)

THIS BILL

1. Adds definitions within the Unclaimed Property Law (UPL):

    a. "Last known address" of an apparent owner, for the purpose of determining the jurisdiction over property subject to escheat pursuant to this chapter, is any description, code, or other indication of the location of the apparent owner which identifies the state of last known address, even if the description, code, or indication of the owner is not sufficient to direct the delivery of first-class United States mail to the apparent owner.

    b. "Digital financial asset" has the same meaning as in Section 3102(g) of the Financial Code.

2. Provides that any digital financial asset held or owing by a business association escheats to the state if unclaimed by the owner for more than three years from the last indication of interest in the property by the owner.

3. Provides that the procedure by which digital financial assets escheat to the state is the general procedure set forth in the UPL, except as specified below.

4. Requires the business association to attempt to contact the apparent owner of a digital financial asset as follows:

    a. If the business association has a mailing address for the apparent owner of a digital financial asset in its records, which is not known to be inaccurate, the business association shall send a notice to the owner via certified mail, return receipt requested.

    b. If the business association does not have a mailing address for the apparent owner of a digital financial asset in its records, and the apparent owner has consented to electronic service, notice may be sent electronically. c) The notice shall be sent not fewer than 6 nor more than 12 months before the time the digital financial asset become reportable to the Controller.

5. Requires the notice sent pursuant to #4 to:
    a. State, at the top of the communication, "THE STATE OF CALIFORNIA REQUIRES US TO NOTIFY YOU THAT YOUR UNCLAIMED PROPERTY MAY BE TRANSFERRED TO THE STATE IF YOU DO NOT CONTACT US," or substantially similar language.

    b. Specify the time when the digital financial asset will escheat and the effects of the escheat, including the need to file a claim for the return of the digital financial asset.

    c. Specify the date of the last interest, or state that for the last two years there has been no indication of owner interest in the property.

    d. Identify the digital financial asset by number or identifier, which needs to exceed four digits.

    e. Indicate that the digital financial asset is in danger of escheating to the state.

    f. Specify that the UPL requires business associations to transfer the digital financial asset if it has been unclaimed for three years.

    g. Include a form, prescribed by the Controller, by which the owner may confirm the owner's current address, and which the owner may return to the holder to avoid escheat.
6. Provides that, in addition to the notice required in #5, the holder may give additional notice at any time between the date of last owner interest and the date the holder transfers the digital financial asset to the Controller.

7. Provides that the holder of a digital financial asset subject to escheat shall, no more than 30 days after the final date for filing a report with the Controller regarding escheated property, transfer the exact digital financial asset type and amount, unliquidated, to the Controllers cryptocurrency custodian or as the Controller designates by regulation.

8. Permits the Controller to decline to take property of unclaimed digital financial assets if, in their discretion, they determine that it is not in the best interest of the state to take custody and notify the holder in writing of that determination within 120 days of the receipt of the holder's report.

9. Provides that escheated digital financial assets delivered to the Controller shall be sold, and the assets or the value thereof shall be recovered by a person making a valid claim, in the same manner as provided for escheated securities.

FISCAL EFFECT: Fiscal: Yes Appropriations: No Local: No

Prior to this committee in Senate appropriations: The State Controller's Office (SCO) indicates costs associated with implementing this program, potentially in the millions of dollars annually depending on the volume of claims (Unclaimed Property Fund, General Fund). Specifically, SCO estimates the following costs:

- 2025-26: Up to $0 for 0 permanent positions, depending on the initial volume of claims;
- 2026-27: Up to $717,000 for 5.0 permanent positions, depending on the initial volume of claims;
- 2027-28: Up to $1,126,000 for 8.0 permanent positions, depending on the initial volume of claims;
- 2028-29: Up to $1,544,000 for 11.0 permanent positions, depending on the initial volume of claims;
- 2029-30 and ongoing: Up to $1,813,000 for 13.0 permanent positions, depending on the ongoing volume of claims.[1]

One notable potential costs not provided is the cost of a custodial wallet or wallets, likewise, projected estimated interest is not accounted for, most likely due to the uncertainty of volume.

COMMENTS: As the use of digital financial assets becomes more mainstream, the legislature must be responsive to adapt our laws and existing framework to the new technology; forcing new technology, products, services, and other innovations into the existing framework may not be sound policy, efficient, or even possible.

1. *Unclaimed Property Law*

California's unclaimed property law (UPL) governs the process by which unclaimed personal property escheats to the state. The UPL framework is one based on custodial possession instead of ownership. The state assumes possession and holds the property in perpetuity as a trustee for the rightful owner. (*Harris v. Westly* (2004) 116 Cal.App.4th 214, 219 (internal quotations

[1] Analysis available here: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202520260SB822# (Last visited 7/11/2025)

omitted), *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 75.) This custodial model was designed to preserve individual property rights while permitting the state to benefit from the use of dormant funds. (*Azure Limited v. I-Flow Corp.* (2009) 46 Cal.4th 1323, 1328 (internal quotations omitted).)

UPL involves three distinct parties: the owner, or the person/entity with the rightful claim to the property, the holder, who is typically the business or financial institution that is in possession of the property that becomes abandoned, and the state controller who assumes custody of the unclaimed property from the holder and then administers claims, and manages the unclaimed property fund. The holder acts as a fiduciary and must report and remit property to the state when it is presumed abandoned. (C.C.P. Section 1530-32.) The controller can retain custody of tangible and intangible property. Once in the controller's custody, the property is either retained (in the case of tangible property) or liquidated (in the case of securities) and deposited in the Unclaimed Property Fund.

2. *Digital Financial Assets*

Digital financial assets (DFA) is a term used to describe a broad array of financial assets that are issued or transferred using distributed ledger technology, better known as blockchain technology. The most common forms of DFA are native crypto assets, tokens, stablecoins, tokenized securities, and crypto asset offerings.

Native crypto assets are those that are native to a particular blockchain protocol itself, such as ether to the Ethereum network, sol to the Solana network, ada to the Cardano network, and bitcoin to the Bitcoin network.

Non-native crypto assets known broadly as ***tokens*** (sometimes referred to as "altcoins") are created using smart contracts on an existing blockchain. ***Smart contracts*** self-executing digital agreement stored and executed on the blockchain, that automatically executes, controls, or documents agreed-upon actions and events when predefined conditions are met. Once completed, the transactions are trackable and irreversible.

Meme coins are tokens typically named after trends, or humorous or social topics. They are usually created to engage a community and can be used in peer-to-peer payments, speculative investing, or trading. Dogecoin, Shiba Inu, and Trump coins are examples of popular meme coins.

Stablecoins are a type of token and digital assets that aim to manage volatility by tracking the values of more stable assets, such as fiat currencies like the U.S. dollar, commodities (e.g., gold), or a pool of digital assets. The applicable traditional or digital assets are then typically held in reserve to back the value of the stablecoin. However, despite the name, there is no guarantee that the value of the coin will remain pegged to its backing.

Tokenized securities are traditional financial assets (like stocks, bonds, or real estate) that have been converted into digital tokens on a blockchain. They represent ownership rights to an underlying asset, just like conventional securities, but with the technological advantages of blockchain.

A ***crypto asset offering*** (also known as initial coin offering or ICO) is a fundraising mechanism in the cryptocurrency industry, similar to an initial public offering (IPO) in the traditional financial sector. Companies aiming to gather resources for the creation of a new coin, application, or service can launch an ICO where interested investors participate in investments in exchange for new cryptocurrency or tokens of value or service.

3. *Are Native Crypto Assets and Tokens Securities?*[2]

Howey Test

The U.S. Supreme Court Case, in *SEC v. Howey*[3], provided the test for determination of whether an asset, digital or otherwise, is an "investment contract", which is a type of security subject to U.S. securities law. The *Howey* test is a four pronged factor test that applies to any contract, scheme, or transaction, regardless of whether it has any of the characteristics of typical securities. The focus of the *Howey* test is not only on the form and terms of the instrument itself (in this case, the digital asset) but also on the circumstances surrounding the digital asset and the manner in which it is offered, sold, or resold (which includes secondary market sales). These factors are 1) an investment of money, 2) in a common enterprise, 3) with the expectation of profit, 4) based on the efforts of a third party.

SEC Determinations

In 2019, the U.S. The Securities and Exchange Commission (SEC) issued a definitive statement[4] declaring that bitcoin is not a security citing:

> "*both the reasoning of* SEC v. Howey *and the framework that the staff applies in analyzing digital assets.*[5] *Among other things, we do not believe that current purchasers of bitcoin are relying on the essential managerial and entrepreneurial efforts of others to produce a profit."* (emphasis added)

The determination garnered from the *Howey* test hinges on the fourth prong; whether or not the blockchain project associated with a cryptoasset is, at any point in time, "sufficiently decentralized." (i.e. not dependent on the actions or statements of an active participant). Furthermore, on February 27, 2025, the SEC determined that meme coins are also not securities. In a statement, the SEC writes:

> "*A "meme coin" is a type of crypto asset inspired by internet memes, characters, current events, or trends for which the promoter seeks to attract an enthusiastic online community to purchase the meme coin and engage in its trading. Although individual meme*

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[2] This section does not consider the status of the digital financial asset types 1) tokenized assets and 2) crypto assets offerings because these assets are excluded from California definition of digital financial asset. See California Financial Code Section 3102(g)(2)(A)-(C).
[3] *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)
[4] https://www.sec.gov/Archives/edgar/data/1776589/999999999719007180/filename1.pdf (Last visited 7/10/2025)
[5] SEC Framework for "Investment Contract" Analysis of Digital Asset https://www.sec.gov/about/divisions-offices/division-corporation-finance/framework-investment-contract-analysis-digital-assets (Last visited 7/10/2025)

> *coins may have unique features, meme coins typically share certain characteristics. Meme coins typically are purchased for entertainment, social interaction, and cultural purposes, and their value is driven primarily by market demand and speculation. In this regard, meme coins are akin to collectibles. Meme coins also typically have limited or no use or functionality. Given the speculative nature of meme coins, they tend to experience significant market price volatility, and often are accompanied by statements regarding their risks and lack of utility, other than for entertainment or other non-functional purposes.*
>
> *It is the Division's view that transactions in the types of meme coins described in this statement, do not involve the offer and sale of securities under the federal securities laws."*[6]

Pending Federal Legislation

As of the date of this publishing, a federal bill, Guiding and Establishing National Innovation of U.S. Stablecoin of 2025 (GENIUS Act of 2025) has cleared the second house of Congress and is under active floor debate. Among other things, this bill defines "payment stablecoin" as

> (A) a digital asset—
> (i) that is or is designed to be used as a means of payment or settlement; and
> (ii) the issuer of which—
> (I) is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; and
> (II) represents it will maintain or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value; and
> (B) that is not—
> (i) a national currency; or
> (ii) a security issued by an investment company registered under section 8(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(a)).

The bill also specifies that payment stablecoins are not securities or commodities.[7]

Conversely, an untold number of cryptocurrency do meet the factors of the *Howey* test–it is rare for a DFA to maintain or gain value without the promotion of an active participant. Countless cases of fraud, scams, and "pump and dump" schemes have been reported. Most notable about these cases are the amount of money lost by victims, often not just their lifesavings, but that of other trusted loved ones in their communities. One primary function of the U.S. Securities Act is to remove the imbalance of information between potential investors and promoters. Whether or not a DFA is considered a security, regulations and oversight are absolutely necessary for public safety.

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[6] https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins (Last visited 7/10/2025)
[7] S.394 — 119th Congress (2025-2026) Section 14

4. *Blockchain Technology*

All DFA are digitally held; an electronic framework and interface are required to own, maintain, use and transfer the asset. The asset itself is not tangible, rather, it is a digital record on a blockchain.

A blockchain is a decentralized, immutable digital record. It records transactions across a network of individual computers known as nodes–this is what makes it decentralized–and once a transaction is recorded, it can not be altered or deleted without consensus among all the nodes–this is what makes it immutable. Digital financial assets are representations of value on this digital ledger, not actual coins or separable digital assets. And because of the entirely digital existence of cryptocurrencies, a digital wallet, simply known as a "wallet", is required to store these assets. A wallet is a digital or software-based way for users to access their cryptocurrencies. Unlike a regular wallet, a crypto wallet does not actually hold the assets, because, as discussed herein, the assets are representations of value on the blockchain. Instead, it stores credentials called private keys that give the owner access to their assets on the blockchain.

5. *Wallets*

Crypto wallets consist of three parts: a public key, a private key, and a public receiving address. When a user wants to send assets from their wallet, they must use their private key to "sign," or confirm, the transaction. This digital signature is like a fingerprint, unique to each individual and their private key, proving that the transaction is coming from the legitimate owner of the wallet and has not been tampered with. This private key is used to generate a public key through an encryption process. The encryption makes it possible to share a public key without risk of compromising the private key to thieves.

Since anyone can remove funds from an address with that address' matching private key, protecting private key information is critical to prevent theft. A crypto wallet provides a secure way to store cryptocurrency, send, and receive it. Two main types of crypto wallets are custodial and non-custodial.

A custodial wallet, also known as a trading account, means entrusting one's private key with a third-party (the "custodian") such as an exchange. This option bears some familiar characteristics of a traditional bank, like ease of use/interface, know-your-customer (KYC) and anti-money laundering (AML) processes, and fees for service. Hacks and exchange failures are serious risk considerations for custodial wallets since a third party manages the private keys of its users; a consumer's financial safety is only as good as the company's security measures and business practices. While native coins are often required to pay for transaction fees on a blockchain, custodial wallets run by exchange platforms may approve transactions without available native coins for a fee.

Non-custodial wallets are self-managed by the holder. The owner is the only person with access to their private keys. While the trade-off of risk from security breaches and mismanagement are eliminated (assuming the user is adept at maintaining cybersecurity protocols), the risk of a holder losing their private key, and thus, access to all the assets within the wallet is a serious consideration.

6. *Partial Keys*

A partial key is an incomplete portion of a private key. Partial keys are used for various reasons, including security measures, escrow or cooperation agreements, and smart contracts. Partial keys are insufficient on their own to decrypt data, but a combination of a certain number or a quorum of them can reconstruct the complete key. The owner of the digital financial asset may hold a partial key for any number of reasons, but usually as a security measure. When the owner stores their digital financial asset with a partial key in a custodial wallet, that third party custodial provider retains information for that private partial key just as it would for a complete private key.

7. *Application to this Bill*

A. Wallets

This bill proposes that the holder of unclaimed property transfer the assets in its native form to the controller, which, in effect, requires the Controller to maintain a wallet. The Chair of this committee intends only to provide the Controller with the tools necessary to safely and functionally execute its goals within its purview, not prescribe a specific type of wallet. In the initial offering, the Chair provided the Controller with the discretion to select between a custodial or non-custodial wallet, each with factors or requirements for implementation based on this Committee's policy expertise. However, upon recommendation of Senate Banking staff out of concern for security risks, the Controller agreed to remove the option to maintain a non-custodial wallet. Assembly Banking Staff and Committee are in agreement with the policy rationale for this recommendation, but they do not believe it is in the Committee's jurisdiction to make recommendations on the scope or discretionary authority of the Controller. Only at the request of the Controller has the language for the option to select a non-custodial wallet been removed as a proposed amendment.

Because the security of state entrusted unclaimed property would be held by a non-custodial wallet, several public safety considerations should be considered when selecting one or more providers. Any provider should be licensed with the DFPI, but in addition, the Controller should consider the provider's quality and procedures for cybersecurity, the ability of the provider to perform accurately and timely, the provider's ability to comply with federal and state laws, the provider's process for reuniting owners with their DFA, including recording keeping, and timeliness of issuing notices, and any other factors the Controller deems relevant.

B. Notice

This bill would allow DFA to automatically escheat to the state if unclaimed by the owner for more than three years from the last indication of interest in the property by the owner. This is the standard currently applied to securities. C.C.P. Section 1516. However, in recent months, advocates, consumers, and DFA influencers have shared misinformation (over a million views) on large social media platforms around California's unclaimed property law in relation to DFA. The fear being that the state is "taking" the consumer's DFA.

While this misinformation is wrong on several levels, one area that can be improved to allay some of the fears is to provide early notice to the owner that the property will escheat to the state. Requiring active abandonment, instead of passive abandonment is in the interest of all three

participants considering the steps that follow initial escheatment. If the process of reclaiming property can be avoided by the holder sending a letter to the last known address of the owner, it should be done. This will save the state's resources and the consumer from navigating reclamation based on avoidable escheatment.

C. Partial Keys

It is generally accepted that not all abandoned DFA will escheat to the state. For example, DFA held in a non-custodial wallet is purely in the control of the owner. If it is lost or abandoned, no third party would be able to monitor, report, or return those assets. But it is in the interest of the owner and the state to utilize the unclaimed property law when needed–it allows for return to the owner if so found, and income to the state in interest gained. As such, terms for the handling of partial keys must be contemplated. The current bill language states:

> "(e) The holder of any digital financial asset that is subject to Section 1516.5 shall, no more than 30 days after the final date for filing the report required by this section, transfer the exact digital financial asset type and amount, unliquidated, to the Controller's crypto currency custodian or as the Controller by regulation may designate." Civ. Code. Proc. Section 1532 (e)

To access the "digital financial access type and amount" the private key is required. As discussed above, DFA are representations of value stored on a digital ledger held across a network of individual computers that can not be separated–private keys are used to authenticate ownership of the assets and wallets actually hold the private key(s). Wallets also hold partial keys. While ownership of the DFA belongs to an individual, more than one person holds part of the key to access and, in turn, transfer the DFA. Thus, to be silent on procedures or duties for partial keys, leaves a potentially large sum of assets unconsidered. Much like section B., early participation by the holder in the escheatment process would save the state resources, additionally, the holder, being one removed from the owner, is likely to be in a better position to locate other partial key holders or comply by making it a term of use internally.

D. Public Sale

It is the current practice of the state to liquidate securities at 18-20 months after the actual date of a holder's required filing to the Controller under Section 1530. See Civ. Code. Proc. Section 1563 (b). The Controller argues that treating digital securities differently than traditional securities would be unfair and open the Controller to litigation. The Committee agrees. However, DFA have not been determined to be securities. Quite the opposite, federal rulings have determined that certain DFA are definitively *not* securities based on longheld standards. At this immediate point in time, mimicking the current practice for another intangible asset is an apt solution to a practical problem. However, this issue bears thoughtful consideration for the nuances of DFA technology in the long term.

More work is needed to determine how to better balance the dual responsibilities of the Controller with regards to escheated DFA. The state has a legitimate need to invest assets to earn interest while holding unclaimed property, failure to do so would be an economic waste and likely a breach of fiduciary duty. Simultaneously, section 1501.5(c) of the Civil Code of Procedure states:

> "It is the intent of the Legislature that property owners be reunited with their property. In making changes to the unclaimed property program, the Legislature intends to adopt a more expansive notification program…" (excluded subdivision list expanded actionable measures to fulfill this intent.)

Volatility in the market for DFA may make it impossible for some owners to recover their DFA once it's been converted. While it is absolutely true that the pendulum swings in the other direction, it's the owners who cannot be made whole that seek recourse in litigation.

The solution is not a simple one. The most immediate potential setbacks of holding DFA in its native form longer or indefinitely is the lack of state financial infrastructure (legally and practically) for investing and holding DFA. However, beneficial considerations are that it maintains assets in the form that would make the owner whole which would reduce the risk of litigation exposure to the state. There is likely a path forward to thread the needle with the dual interests, but the solution must be one based on DFA nuances and technology, not ill-fitting traditional analogs.

8. *Recommendations*

To address the issues discussed above, the Committee recommends the following amendments, subject recommendations from Legislative Counsel. *Underlined and italicized* language are additions, ~~strike~~ through language indicates repeal.

1. Add a definition for "Private key"

   SEC. 2. *Section 1501 of the Code of Civil Procedure is amended to read:*

   Sec 1501 (m) "Private Key" means a unique element of cryptographic data, used for signing transactions on a blockchain, and is known to the owner of the element.

2. Provide the Controller considerations for selection of a custodial wallet.

   SEC. 7. *Section 1568 of the Code of Civil Procedure is added to read:*

   1568 (a) The Controller may, in its discretion, select one or more custodians for the management and safekeeping of digital financial assets that have escheated to the state. Any entity selected as a custodian shall hold a valid license issued by the Department of Financial Protection and Innovation pursuant to Chapter 2 (commencing with Section 3201) of Division 1.25 of the Financial Code

   (b) If the Controller selects a custodian pursuant to subdivision (a), the Controller shall consider the following criteria in making the selection:

   i. Secure storage to ensure the safekeeping of digital financial assets, including robust cybersecurity measures to prevent unauthorized access.

ii. Capability to manage private keys associated with digital financial assets and ensure the ability to transfer or transact with the assets when required.

iii. Proven experience in handling digital financial assets.

iv.. Compliance with all applicable federal and state regulations related to digital financial asset custody.

v. Regular reporting mechanisms to the Controller regarding the status and value of the digital financial assets in their custody.

vi. Processes to reunite owners with their digital financial assets, including maintaining updated contact records and issuing timely notifications.

vii. Qualifying as a "financial institution" under Chapter X of Title 31 of the Code of Federal Regulations, which subjects the qualified custodian to the anti-money laundering obligations of the federal Bank Secrecy Act (31 U.S.C. Sec. 5311 et seq.), in addition to any state-imposed anti-money laundering obligations.

viii. Other factors the Controller deems relevant.

3. Update the triggering requirement for dormancy on unclaimed property.

SEC. 3. *Section 1516.5 is added to the Code of Civil Procedure, amended to read:*

1516.5 ~~(a) Pursuant to Section 1510, any digital financial asset held or owing by a business association escheats to the state if unclaimed by the owner for more than three years from the last indication of interest in the property by the owner.~~

(a) Pursuant to Section 1510, any digital financial asset held or owing by a business association escheats to the state if unclaimed by the owner for more than three years from either of the following:

(1) The date a written or electronic communication to the owner is returned undelivered by the United States Postal Service or by electronic mail or other electronic messaging method, as applicable.

(2) The date of the last exercise of ownership interest by the owner in the digital asset account if the owner does not receive written or electronic communications from the holder or the holder does not have the means of systematically tracking or monitoring the nondelivery of those communications.

(b) The running of the three-year period under paragraph (1) of subdivision (a) ceases immediately upon the exercise of an act of ownership interest in the digital asset account or written, oral, or

electronic communication with the holder as evidenced by a memorandum or other record on file with the holder or its agents.

(c) For purposes of this section, an "exercise of an act of ownership interest" includes any of the following actions by the owner regarding the digital asset account:

(1) Conducting a transaction regarding the digital asset account, including buying or selling digital assets, depositing into or withdrawing from the account fiat currency or other property whether by a one-time transaction or a recurring transaction previously authorized by the owner.

(2) Electronically accessing the digital asset account.

(3) Conducting any activity with respect to another digital asset account or any other property owned by the owner with the same holder.

(4) Taking any other action that reasonably demonstrates to the holder that the owner knows that the property exists.

4. Add terms for management of partial keys.

SEC. 3. *Section 1516.5 is added to the Code of Civil Procedure, added to read:*

ADD (h) The holder of any partial key to any digital financial asset that is subject to Section 1516.5 shall attempt to obtain the minimum number of keys required to transfer the digital financial assets within 60 days of determination that the digital financial assets are eligible for escheatment.

SEC. 5. *Section 1532 of the Code of Civil Procedure is amended to read:*

(e) The holder of any digital financial asset that is subject to Section 1516.5 shall, no more than 30 days after the final date for filing the report required by this section, transfer the exact digital financial asset type, *private keys*, and amount, unliquidated, to the Controller's crypto currency custodian or as the Controller by regulation may designate. *In the event that the holder possess only a partial private key to the digital financial asset or is otherwise unable to move the digital financial asset to the Controller, the holder shall maintain the digital financial asset until the additional keys required to transfer the digital financial asset becomes available to the holder or the holder is otherwise able to transfer the digital financial asset to the Controller.*

5. Add terms for the conversion of digital financial assets separate and apart from securities.

SEC. 7. *Section 1563 of the Code of Civil Procedure is added to read:*

(c) Digital financial assets held by the Controller may be converted to fiat currency at prevailing prices by any method that the Controller may determine to be advisable. Digital financial assets shall be converted by the Controller no

sooner than 18 months, but no later than 20 months, after the actual date of filing of the report required by Section 1530. If digital financial assets delivered to the Controller remain in the custody of the Controller, a person making a valid claim for those securities under this chapter shall be entitled to receive the digital financial assets from the Controller. If the digital financial assets have been converted, the person shall be entitled to receive the net proceeds received by the Controller from its sale.

REGISTERED SUPPORT / OPPOSITION:

Support (Last checked 7/11/2025)

None on file

Opposition (Last checked 7/11/2025)

None on file

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