

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 293 (Kalra)
Version: January 21, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Preneed funeral arrangements: unclaimed property

DIGEST

This bill, beginning in 2023, establishes procedures governing disposition of preneed funeral trust accounts when they go unclaimed or the funeral establishment is sold or closes.

EXECUTIVE SUMMARY

Preneed funeral trust accounts are funds held in trust by funeral establishments for promised funeral merchandise and services to be provided after the beneficiary's death. It is estimated that California's funeral establishments collectively hold more than \$500 million in preneed contract funds for consumers. When a funeral establishment goes out of business or the beneficiary passes but the family does not know of the existence of the account, this substantial investment may lie dormant indefinitely.

This bill, which is sponsored by State Controller Betty Yee, establishes protections that become operative in 2023 for consumers of preneed funeral arrangements and their families. First, the bill provides a process for unclaimed preneed funeral trust funds to escheat to the State pursuant to the Unclaimed Property Law (UPL) if the funds remain unclaimed for three years after the funds become payable and distributable under specified dormancy triggers: the beneficiary reaching age 105, the agreement being 45 years old, the funeral establishment learning of the beneficiary's death, or three years passing since the last payment on an installment plan. Second, the bill establishes procedures governing preneed funeral trust funds when the funeral establishment is sold or closed, including requirements for the provision of notice to specified parties and processes applicable when the preneed funeral agreements are returned, transferred to another establishment, or escheated to the State. The bill has no opposition. It passed the Senate Business, Professions and Economic Development Committee by a vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Cemetery and Funeral Act (Bus. & Prof. Code § 7600 et seq.), which is administered by the Cemetery and Funeral Bureau within the Department of Consumer Affairs. Provides that protection of the public is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code § 7601.) Specifically authorizes the Bureau to enforce on its own initiative provisions governing preneed funeral arrangements and to adopt rules and regulations it deems necessary to perform its duties and safeguard funds held in trust. (Bus. & Prof. Code § 7740.)
- 2) Provides that any preneed arrangement, contract, or plan requiring payment of money or delivery of securities to the licensee funeral establishment to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, must be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms. Any payment made or securities deposited must be released upon the death of the person for whom the trust was established. Income from the trust may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee determined by the Bureau, and to establish a reserve of up to 10 percent of the corpus of the trust that may be kept as a fee in the event of cancellation on the part of the beneficiary. The corpus of the trust cannot be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust. (Bus. & Prof. Code § 7735.)
- 3) Requires all securities purchased by the trustor for deposit in trust and all money received from the trustor to be placed in trust with a trustee within 30 days of their receipt by the funeral establishment pursuant to a trust agreement that requires the trustee to hold the money or securities in trust for the purposes for which it was deposited. The trust agreement must provide for the trust corpus to be distributed to the funeral establishment upon the filing of satisfactory evidence of the death of the beneficiary and satisfactory evidence that the funeral establishment has furnished the merchandise and services, except as specified. (Bus. & Prof. Code § 7737.)
- 4) Provides that any person who willfully violates the provisions governing preneed funeral arrangement is guilty of a misdemeanor and subject to disciplinary action if they are a licensed funeral establishment. (Bus. & Prof. Code § 7739.)
- 5) Requires a funeral establishment to present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed

agreement for which payment is in possession of the establishment. A knowing failure to perform this duty subjects the establishment to a civil fine equal to three times the cost of the preneed agreement or \$1,000, whichever is greater. (Bus. & Prof. Code § 7745.)

- 6) Establishes the UPL (Code Civ. Proc. § 1500 et seq.), which establishes the baseline conditions for intangible personal property to escheat to the state from its holder, and provides specific requirements for when banking, financial, insurance, and other businesses or entities that hold another's property – whether in accounts, insurance policies, annuities, or safe deposit boxes, or other instruments – must transmit that property to the State Controller. Escheatment typically occurs if the owner fails to engage in any activity for a specified period of time (usually three years), and if the owner fails to respond to legally-required notices. (Code Civ. Proc. §§ 1510-1521.)
- 7) Requires the holder of escheated property to timely submit a verified report, containing specified information, to the State Controller on an approved form. (Code Civ. Proc. § 1530.)
- 8) Permits a person who claims to be the owner of property delivered to the State Controller under the UPL to file a claim for the property or the net proceeds of any sale of the property. Requires the Controller to consider each claim within 180 days and to either return the property to the claimant, or provide a written explanation to the claimant if it denies the claim. Allows any person aggrieved by a decision of the Controller to bring an action, as specified. (Code Civ. Proc. §§ 1540-1541.)
- 9) Provides for the sale of escheated securities and retention of the proceeds by the Controller absent claim by those securities' owner. (Code Civ. Proc. § 1563.)

This bill:

- 1) Requires a funeral establishment to report and pay or deliver, or cause the trustee to release for payment or delivery, to the Controller all unclaimed preneed funeral trust funds, including the trust corpus and accrued income, less a revocation fee.
- 2) Provides that a funeral establishment that intends to cease engaging in business operations, as specified, may, with written notice, on a form created by the Bureau, delivered at least 60 days before the cessation of operations, transfer its preneed funeral agreements to another funeral establishment only if that successor funeral establishment is licensed. If the transfer is to a funeral establishment that is more than 60 miles away, the transferring establishment must obtain prior written approval of the beneficiaries or trustors, or their legal representatives. Otherwise, all funds must be returned to one of those parties, as provided.

- 3) If those parties do not respond within six months of receiving notice that the funeral establishment that intends to cease engaging in business operations is preparing to return the trust funds, requires the funeral establishment to report and pay or deliver or cause the trustee to release for payment or delivery all funds together with accrued income, and provides that the funds escheat to the state in accordance with the UPL, except that the funeral establishment cannot retain the revocation fee.
- 4) Provides that all funds maintained in a preneed funeral trust or similar account or plan escheat to the state if, for more than three years after the funds became payable and distributable due to one of the following:
 - a) The beneficiary of the trust attained, or would have attained if living, 105 years of age.
 - b) Forty-five years have passed since execution of the preneed funeral agreement.
 - c) The holder received notification of the death or presumed death of the beneficiary and has not provided the contracted funeral merchandise or services.
 - d) 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 three preceding years and neither the trustor nor the beneficiary has communicated with either the funeral establishment or the trustee about the preneed funeral installment trust during that three-year period.
- 5) Provides that escheatment of preneed funeral trust funds to the Controller release the funeral establishment from the obligation of furnishing the personal property, funeral merchandise, or services originally arranged in the preneed agreement associated with the trust. However, if the funeral establishment provided personal property, or funeral merchandise or services to the beneficiary after funds have been escheated, the funeral establishment is entitled to recover the escheated funds upon submission to the Controller of a death certificate and a statement detailing the personal property or funeral merchandise or services, as specified.
- 6) Relieves the trustee of liability with regard to the corpus and income of the trust upon delivery of the funds to the funeral establishment, the trustor, the beneficiary, or the Controller, pursuant to the bill's provisions.
- 7) Forbids a trustee or funeral establishment from charging a trust, trustor, or beneficiary any fees or costs associated with searches or verifications required to fulfill the requirements of this bill, but does permit the recoupment of these fees or costs from the annual trust administration fees currently permitted by law.
- 8) Becomes operative January 1, 2023.

COMMENTS

1. Author's statement

The author writes:

AB 293 protects consumers and their surviving loved ones by providing a convenient way to locate and claim unused preneed trust funds. Specifically, AB 293 would clarify the party responsible for reporting abandoned trust accounts, outline dormancy triggers to assume the death or presumed death of the beneficiary, and establish requirements for communication with owners of preneed funeral trust accounts.

2. Consumer protections for purchasers of preneed funeral arrangements

a. Process for preneed funeral trusts to escheat to the State

Preneed funeral trust accounts are funds held in trust by funeral establishments for promised funeral merchandise and services to be provided after the beneficiary's death. It is estimated that California's funeral establishments collectively hold more than \$500 million in preneed contract funds for consumers. When a funeral establishment goes out of business or the beneficiary passes but the family does not know of the existence of the account, this substantial investment may lie dormant indefinitely. To protect beneficiaries and their families, the bill creates a process that will allow these long forgotten sums of money to escheat to the State so that the sums may be distributed pursuant to the UPL.

Enacted in 1959, the UPL provides for escheat of unclaimed personal property. The UPL "has dual objectives: (1) to reunite owners with unclaimed funds or property, and (2) to give the state, rather than the holder, the benefit of the use of unclaimed funds or property. The state, through the Controller, acts as the protector of the rights of the true owner." (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 74 [citations omitted].) The UPL requires banks, insurance companies, corporations, and certain other entities 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. A person with a legal right to escheated property may file a claim to recover the property from the state. (Code Civ. Proc. §§ 1540–1542.) The Controller maintains a database for the public to search for and claim property held by the state in their name.¹

¹ *Unclaimed Property Search*, California State Controller website, available at <https://ucpi.sco.ca.gov/UCP/Default.aspx> (as of Jun. 27, 2021).

Although preneed funeral trusts are already subject to the UPL, there is no statutory mechanism to ensure their transfer to the Controller. Under this bill, property held in trust under a preneed funeral agreement would be deemed “payable and distributable,” under the UPL, if one of these conditions is met:

- The beneficiary has attained, or would have attained if still living, 105 years of age;
- 45 years have passed since execution of the agreement establishing the preneed funeral arrangement;
- The holder has received notification of the death or presumed death of the beneficiary and has not provided the contracted-for funeral goods and services; or
- The preneed funeral trust is an installment trust, the amount due has not been paid in the three preceding years, and neither the trustor nor the beneficiary has communicated with the funeral establishment or the trustee about the trust during that time.

Three years after one of these dormancy criteria is satisfied, the bill would require that funds and property in the preneed funeral trust escheat to the state.

So long as they follow the procedures outlined in this bill, funeral establishments and trustees are relieved of the liabilities for any unclaimed preneed funeral assets transferred to the state. Finally, if, post-escheatment, a newly-deceased beneficiary’s survivors might unexpectedly appear and seek to invoke the benefits of the preneed funeral arrangement. The funeral establishment would have the option to provide the contracted-for goods and services and obtain reimbursement from the State Controller.

b. Process for transferring a preneed funeral trust when the funeral establishment ceases operations

The bill also establishes procedures governing preneed funeral trust funds when the funeral establishment is dissolved, closed, sold, or loses its license. Sixty days before cessation of operations, the bill would require notices with specified information to be provided to beneficiaries or trustors, or their legal representatives, as well as trustees of preneed funeral agreements. If the establishment does not transfer its preneed funeral agreements, the returns must be completed within 30 days, as specified. If, however, the agreements are transferred, the agreement can be cancelled and must be returned within 30 days. If the funeral establishment receiving the transferred agreements is more than 60 miles away from the funeral establishment that is closing, written consent of the appropriate parties is required for the transfer to be completed. Otherwise, all funds must be returned to one of those parties, as provided. Funds that are neither transferred nor returned escheat to the State after six months, as provided.

3. Support

State Controller Betty Yee writes:

Laws regulating preneed funeral trust accounts only ensure the funds for merchandise and services are available at the time of death. Funeral establishments are not required to have consistent contact with the owners of record or adequately address handling of abandoned trust accounts.

AB 293 closes this loophole by bringing unclaimed preneed funeral trust accounts under unclaimed property law. This bill would define unclaimed preneed funeral trust accounts as unclaimed property, clarify the party responsible for reporting abandoned trust accounts, outline dormancy triggering events and establish requirements for contact with owner of trust accounts. AB 293 will enhance consumer protections and create a clear mechanism for people to locate and claim unused preneed funeral trust accounts.

SUPPORT

California State Controller Betty Yee (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2332 (Kalra, 2020) was substantially similar to this bill and was held on the Senate Appropriations Suspense File. Due to COVID-19, the bill was not heard in this Committee.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 11, Noes 0)
Assembly Floor (Ayes 78, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Business and Professions Committee (Ayes 17, Noes 0)
Assembly Judiciary Committee (Ayes 11, Noes 0)
