

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

AB 2280 (Reyes)
Version: May 19, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Unclaimed property: interest assessments and disclosure of records

DIGEST

This bill establishes the California Voluntary Compliance Program to facilitate the voluntary compliance of holders of property for the purpose of resolving unclaimed property that is due and owing to the state under the Unclaimed Property Law (UPL), as provided. The bill prohibits the disclosure of certain records and information by the State Controller's Office, and enacts changes to the UPL related to third parties that file UPL claims on behalf of owners.

EXECUTIVE SUMMARY

The UPL establishes procedures for the state to hold, but not own, unclaimed property, and specifies conditions when unclaimed property held by a third party (the holder) may escheat to the state. The holder must file an annual report on unclaimed property and turn the property over to the Controller at the time the report is filed, and is subject to an interest penalty for not doing so. Compliance with the UPL by holders is very low. The bill seeks to increase compliance by enacting a voluntary compliance program. The bill also makes other changes to the UPL, including curbing abuses by third parties that file UPL claims on behalf of owners and prohibiting the disclosure of certain records and information by the State Controller's Office.

The bill is sponsored by State Controller Betty Yee. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the UPL, provides that it is the intent of the Legislature that property owners be reunited with their property, and prohibits property received by the state under the UPL from permanently escheating to the state. (Code Civ. Proc. §§ 1500 et. seq.; § 1501.5(a) & (c).)
- 2) Provides that any person or entity holding unclaimed personal property subject to escheat must provide a report to the Controller identifying the property, the possible owners, and the possible owners' last known address. (Code Civ. Proc., § 1530.)
 - a) Requires every person that files a report to pay or deliver to the Controller all escheated property specified in the report between seven months and seven months and 15 days after the final date on which the report must be filed. (Code Civ. Proc., § 1532(a).)
- 3) Requires banking and financial organizations, insurance companies, and other businesses that hold a customer's property to transmit that property to the Controller if the owner fails to engage in any account activity for a specified period of time, generally three years, and if the owner fails to take certain actions and respond to specified notices. (Code Civ. Proc. §§ 1510-1515.)
- 4) Requires a person to pay the Controller 12 percent interest on the property's value from the date the property should have been reported, paid, or delivered if that person fails to report, pay, or deliver unclaimed property within the time required under the UPL. (Code Civ. Proc., § 1577.)
 - a) Limits the interest payable to \$10,000 if the holder paid or delivered unclaimed property in a timely manner, but filed a report that is not in substantial compliance with reporting requirements. (*Ibid.*)
 - b) Provides that the interest penalty is in addition to any other liability under existing law. (*Ibid.*)
 - c) Exempts holder or property from interest if their failure to report, pay, or deliver unclaimed property is due to reasonable cause. (*Ibid.*)
- 5) Establishes an amnesty program for unclaimed property paid or delivered to the Controller at any time on or before December 31, 2002. (Code Civ. Proc., § 1577.5.)
- 6) Prohibits agreements to locate, deliver, recover, or assist in the recovery of unclaimed property if that agreement is entered into between the date unclaimed property is reported to the Controller and the date the Controller publishes a required notice. Permits a fee of no more than 10 percent of the recoverable property's value. (Code Civ. Proc., § 1582.)

- 7) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)

- 8) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 6250 et seq.)
 - a) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7922.530.)
 - b) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 6253.)
 - c) Recodifies the CPRA in Division 10 of Title 1 (§§ 7920.000 - 7931.000) of the Government Code effective January 1, 2023.

This bill:

- 1) Authorizes the Controller to establish the California Voluntary Compliance Program (VCP) under the UPL, which allows holders to resolve unclaimed property that is due and owing to the state.

- 2) Establishes procedures and requirements for the VCP, including, among others:
 - a) grants the Controller discretion to enroll eligible holders who apply in the VCP;
 - b) requires the Controller to waive assessed interest against a holder enrolled in the Voluntary Compliance Program if the holder meets certain criteria; and
 - c) specifies reasons a holder would be ineligible to participate in the program, including that the holder is the subject of a civil or criminal prosecution involving UPL compliance at the time it requests to enroll.

- 3) Requires the Controller to waive interest penalties payable by a holder under the UPL for failing to report, pay, or deliver unclaimed property if the holder participates in and completes all of the requirements of the VCP.

- 4) Provides that the Voluntary Compliance Program shall only become operative upon appropriation by the Legislature.
- 5) Declares invalid any agreement to locate, deliver, recover, or assist in the recovery of unclaimed property if that agreement is entered into between the date unclaimed property is reported to the Controller and the date it is paid or delivered to the Controller.
- 6) Permits such an agreement to be entered into after payment or delivery to the Controller if the following conditions are met:
 - d) the fee or compensation paid does not exceed 10 percent of the recovered property;
 - e) the owner does not have to pay the fee or compensation before the Controller approves the claim and pays the recovered property to the owner; and
 - f) the agreement discloses the nature and value of the property, that the Controller is in possession of the property, and the address where the owner can directly claim their property from the Controller.
- 7) Prohibits the disclosure of certain records and information by the State Controller's Office and makes various findings to demonstrate the Legislature's interest in limiting the public's right to access to those records and information under the CPRA.

COMMENTS

1. Stated need for the bill

The author writes:

While the state has an established process to reclaim unclaimed property, as of 2020, approximately 1.3 million businesses that file taxes have failed to submit an unclaimed property report to the Controller. It is estimated that businesses that are out of compliance could be holding in excess of \$17.6 billion in unclaimed property. This is due to a combination of a lack of awareness of existing law, costs associated with reporting, and potential privacy concerns.

AB 2280 addresses the lack of awareness and penalty issue raised by the Legislative Analyst's Office by establishing a voluntary compliance program (VCP), allowing the State Controller's Office (SCO) to waive penalty interest for past due properties reported by holders that voluntarily enroll, are accepted by SCO, and successfully complete the program. This VCP will increase the number of holders in compliance with the Unclaimed Property Law (UPL), annual revenues from additional remittances, properties returned to rightful owners, and public awareness of the UPL. Additionally, AB 2280 will enhance consumer protection by ensuring a

claimant's personal and confidential information is shielded from public disclosure, and by preventing aggressive unclaimed property investigators from charging claimants upfront fees.

2. Voluntary Compliance Program (VCP)

a. *Background on UPL and lack of compliance*

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 it means the state has custody of the property in perpetuity, until the owner claims the property. The UPL specifies conditions when unclaimed property held by a third party may escheat to the state. Under the UPL, there are three significant players: the owner, the holder and the state. The "owner" is the person to whom the property actually belongs. The "holder" is the person who has possession of the property. A holder might be a bank or other money depository (holds deposits of owner's money, holds property in a safe deposit box), or a business that has issued a check to an individual or other business, or a life insurance policy or annuity. The holders of unclaimed property have no interest in the unclaimed property (*Bank of America v. Cory* (1985) 164 Cal. App. 3d 66, 74.) A holder is simply a trustee of the property while the property is in the possession of the holder.

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. (*Bank of America v. Cory, supra*, at 74; *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal. 2d 462, 463.) The state, through the Controller, acts as the protector of the rights of the true owner. (*Bank of America, supra*, at 74.)

The UPL establishes procedures to be followed when property goes unclaimed, generally for a period of three years, and reverts to the state. Under existing law, the holder must file an annual report on unclaimed property and turn the property over to the Controller at the time the report is filed. To promote and ensure program compliance, the Controller conducts audits of business entities and assesses a 12 percent interest assessment on companies that fail to remit unclaimed property to the state as prescribed in the law. The UPL also establishes procedures for a person who claims an interest in property that has escheated to the state to claim that property. As of February 2021, the State Controller's Office (SCO) reported it holds "more than \$10.2 billion in lost or forgotten property such as bank accounts, stocks, bonds, uncashed checks, insurance benefits, wages, and safe deposit box contents."¹

¹Controller Yee Celebrates National Unclaimed Property Day, Cal. State Controller's Off., PR21:3 (Feb. 1, 2021), available at https://www.sco.ca.gov/eo_pressrel_21369.html (as of May 4, 2022).

b. Lack of compliance

Since 2009, the SCO has estimated that more than 1 million businesses that conduct business and file taxes in California and may be holding unclaimed property have failed to file a report. Despite a 25 percent increase in holder reporting over the last 5 years, the number of businesses out of compliance remains consistent. Although SCO administers California's unclaimed property program, existing law does not explicitly grant SCO authority to create and administer a voluntary compliance program. The Legislative Analyst's Office issued a report in 2019 that stated "the vast majority of California businesses are out of compliance with the UPL."² The report cited two main reasons for lack of compliance: lack of awareness about the law, and willful noncompliance by businesses seeking to avoid the statutory interest penalty.³ This bill seeks to address the issue highlighted in the report by establishing a VCP.

The VCP proposed in the bill would allow a holder with unclaimed property to apply to participate in the VCP. The Controller would have the authority to decide whether or not to accept the holder as a participant, but has to automatically reject any holder who runs afoul of specified statutory criteria, including involvement in a prosecution for UPL noncompliance, owing outstanding interest to the Controller, or having had interest waived by the Controller at any time in the past five years. Recent amendments to the bill provide that a holder subject to an outstanding interest assessment may file or refile a request to enroll in the program after resolving the outstanding interest assessment. Recent amendments also provide that if a holder acquired or merged with another entity within the five-year period in which interest was waived, the holder may request to enroll in the program for the purpose of resolving unclaimed property that may be due and owing to the state as a result of the acquisition or merger.

If a holder is accepted into the VCP, the holder must satisfy all statutory and regulatory requirements. These include, among others, participation in an education program, review of the past 10 years' worth of books and records for unclaimed property by the State Controller's Office (SCO), filing of a timely report with the SCO regarding any unclaimed property discovered during the review, and delivering all unclaimed property to the Controller within seven to seven-and-one-half months of reporting it. If the holder satisfies all of these requirements, then the Controller must waive all interest penalties that the holder would otherwise owe; however, the Controller may reinstate the waived interest if the holder fails to deliver all of the reported property as required.

In the past, the Legislature has authorized short-term amnesty programs that waived interest penalties for holders who reported past-due unclaimed property under the amnesty program. According to the LAO:

² Legislative Analyst's Office, *Increasing Compliance with Unclaimed Property Law* (Mar. 15, 2019) at 3, available at <https://lao.ca.gov/Publications/Report/3978>.

³ *Ibid.*

The state has conducted an amnesty program for holders before. Chapter 267 of 2000 (AB 1888, Dutra), authorized a one-year amnesty program beginning in January 2001. (The program was extended for a second year – through December 2002 – by Chapter 22 of 2002 [AB 227, Dutra].) During the amnesty period, SCO conducted outreach efforts, including advertisements in national newspapers. The program resulted in 4,927 holder reports detailing 145,903 properties valued at \$196 million (in nominal terms) – \$113 million in cash and \$83 million in securities. Of these reports, 1,567 were made by holders that had never previously filed. For comparison, this represented about a quarter of property escheated in 2000-01 and 2001-02.⁴

In contrast to past amnesty programs, the VCP would be an ongoing program using forgiveness of interest as one of several tools to encourage long-term UPL compliance.

3. Limiting disclosures under the California Public Records Act (CPRA)

This bill provides that the SCO is not required to disclose specified records and information provided to it under the UPL. These records and information include statements of personal worth or personal financial data (including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records) and personal information, such as social security number or date of birth. The bill also provides that records that the Controller and third-party auditors obtain the possession of as a result of an examination of records under the UPL are not subject to disclosure under the CPRA, except for records of property that should have been reported to the Controller as unclaimed property. The bill states that these limitations on disclosure are needed to maintain the confidentiality of private businesses' financial records and to protect the privacy of individuals and protect against fraud and identity theft. Given the sensitive nature of the information being protected, this limitation on disclosure seems warranted.

4. Addressing abuse by third parties that file UPL claims on behalf of owners

The UPL allows a third party to assist claimants with locating and recovering their unclaimed property provided sufficient time has passed since the property was remitted, and that the compensation for assisting the property owner does not exceed 10 percent of the property value. According to the sponsor, SCO will receive claims directly from the third party filing on behalf of claimants, with copies of their agreements to receive 10 percent upon approval and payment. However, SCO also receives claims from owners who indicate that they have already pre-paid a third party that claims to have located property for them, and mails the claimant a claim form and instructions for the claimant to submit their claim to SCO. In some cases, the claimant may not be entitled to the entire property they are claiming, the current value of the property may be less than they were told, or they may not be entitled to the property at

⁴ *Id.* at 7.

all, resulting in the claimant having pre-paid a portion of property they believed they were due, but ultimately do not receive.

In order to address this abuse the bill prohibits such an agreement between the date when property is reported to the Controller and when it is actually in the Controller's possession. It limits any third party fee to 10 percent of the value of the property actually recovered. Lastly, it requires that the fee be paid only after the owner recovers their property. These changes are meant to allow for legitimate assistance with claim filing, while strengthening consumer protections by preventing large fees not based on the actual value of recovered property.

5. Statements in support

The sponsor of the bill, State Controller Betty Yee, writes:

The State Controller's Office (SCO) administers the Unclaimed Property Program, which safeguards lost or forgotten property and provides a means for reuniting property with its rightful owners. Current business owners that are holders of unclaimed property are required to report and remit unclaimed property to SCO when there has been no activity or contact with the owner for a specified period of time. SCO estimates less than two percent of businesses are compliant with the UPL, and businesses that are out of compliance could be holding in excess of \$17.6 billion in unclaimed property.

Although SCO administers California's Unclaimed Property Program, existing law does not explicitly grant SCO authority to create and administer a VCP. AB 2280 will establish a VCP, allowing SCO to waive penalty interest (currently 12 percent per annum) for past due properties reported by holders that voluntarily enroll, are accepted by SCO, and successfully complete the program. This VCP will increase the number of holders in compliance with the UPL, annual revenues from additional remittances, properties returned to rightful owners, and public awareness of the UPL.

SUPPORT

California State Controller Betty Yee (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1208 (Ting, 2021) authorizes the Controller to implement measures designed to streamline the secure payment of claims, as specified. AB 1208 is pending in the Senate Appropriations Committee.

Prior Legislation:

AB 466 (Petrie-Norris, Ch. 92, Stats. 2021) authorized the Franchise Tax Board to provide the State Controller with additional information from business entity income tax returns or other business entity records in order to increase outreach and compliance efforts with businesses likely to have unreported unclaimed property.

AB 378 (Steinberg, Ch. 304, Stats. 2004) exempted holders from interest penalties for failure to timely report or deliver unclaimed property if the failure was due to reasonable cause.

AB 227 (Dutra, Ch. 22, Stats. 2001) extended this amnesty program for a second year, through December 31, 2002.

AB 1888 (Dutra, Ch. 267, Stats. 2000) authorized a one-year amnesty program under the UPL, which began on January 2001.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
