



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites	
------	------------------	----------------	--------------	-----------------	------------------	--------------	--

AB-2280 Unclaimed property: interest assessments and disclosure of records. (2021-2022)

SHARE THIS:  

Date Published: 09/14/2022 09:00 PM

Assembly Bill No. 2280

CHAPTER 282

An act to amend Sections 1577 and 1582 of, and to repeal and add Section 1577.5 of, the Code of Civil Procedure, and to add Sections 7925.015 and 7927.425 to the Government Code, relating to unclaimed property.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2280, Reyes. Unclaimed property: interest assessments and disclosure of records.

(1) Under existing law, property held by a person that belongs to another and that is unclaimed for more than specified periods escheats to the state. Existing law requires persons holding unclaimed property to report and pay or deliver it to the Controller within a prescribed time period, except as specified, and imposes interest payments for a failure to do so. Existing law requires the holder, if the property is not subject to escheat after the report is filed and before payment or delivery is made, to file another report instead of paying or delivering the property. Existing law limits the interest payable to \$10,000 if a holder pays or delivers unclaimed property in a timely manner, but files a report that is not in substantial compliance with certain statutory requirements. Existing law provides that a holder is not subject to interest payments if the holder's failure to report in substantial compliance with the requirements described above is due to reasonable cause.

This bill would, in addition, impose the limit of \$10,000 on interest payable if a holder files a report, after the initial report and before payment or delivery is made for property that may not be subject to escheat, that is not in substantial compliance with statutory requirements. The bill would authorize the Controller to waive interest payable if the holder's failure to report in substantial compliance with specified requirements is due to reasonable cause. The bill would require the Controller to waive interest payable if the holder participates in and completes all of the requirements of the California Voluntary Compliance Program, subject to the Controller's right to reinstate, as specified.

This bill would, upon appropriation by the Legislature, allow the Controller to establish the California Voluntary Compliance Program, for the voluntary compliance of holders for the purpose of resolving unclaimed property that is due and owing to the state under the Unclaimed Property Law. The bill would prescribe the requirements for a holder to participate in the program and for a Controller to waive interest assessments, including participation in training and education, review of books and records for unclaimed property, and reporting and payment or delivery of unclaimed property within specified timeframes. The bill would allow the Controller to reinstate interest that had been waived under the program if the property is not timely paid or delivered. The bill would allow the Controller to adopt guidelines and forms for the administration of the program. The bill would delete obsolete provisions.

(2) Under existing law, an agreement to locate, deliver, recover, or assist in the recovery of escheated property reported to the Controller is not valid if it is made between the time the property is reported to the Controller and the Controller gives notice of the existence of the property, or if the fee or compensation pursuant to the agreement exceeds a specified amount. Existing law requires an agreement made after the Controller gives notices to be in writing and signed by the owner after disclosure in the

agreement of the nature and value of the property and the name and address of the person or entity in possession of the property.

This bill would recast these provisions. The bill would invalidate an agreement if it is made between the time the property is reported to the Controller and the property is paid or delivered or if it would require the owner to pay a fee or compensation prior to approval of the claim and payment of the recovered property to the owner by the Controller. The bill would require an agreement made after the property is paid or delivered to include a disclosure of 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 the property from the Controller.

(3) Existing law, the California Public Records Act, requires public records, as defined, to be open to the public for inspection and made promptly available to any person, except as specified.

This bill would add exemptions from disclosure under the California Public Records Act for records and information of the Controller obtained pursuant to the Unclaimed Property Law, including financial records obtained as a result of an examination of records of persons reasonably believed to be holders of unclaimed property, records related to statements of personal worth or personal financial data, and personal information, as defined.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Unclaimed Property Law was passed to protect consumers and provide citizens a single source to check for unclaimed property that may be reported by businesses around the nation and to enable the state to return the property to its rightful owners and their heirs. It also aims to prevent businesses from keeping unclaimed property and using it as business income.

(b) Currently, the Controller's outreach to and education of holders on their obligations under the Unclaimed Property Law, the threat of an audit, and the 12 percent interest assessment payable under Section 1577 of the Code of Civil Procedure are not sufficient to compel businesses to report past due property.

(c) As of 2020, approximately 1.3 million businesses that file taxes with the Franchise Tax Board are estimated to have unclaimed property to report, but have failed to submit an unclaimed property report to the Controller.

(d) In addition to a lack of awareness and understanding of the Unclaimed Property Law and the reporting process, and the lack of a way for holders to submit reports online, the current interest rate of 12 percent per annum for past due property is a deterrent to would-be first-time filers because of the potentially large interest assessment they could incur with their first report.

(e) The current 12 percent interest assessment is also a deterrent to holders that consistently report unclaimed property to report past due property that they have not yet reported because of the potentially large interest assessment they would incur for doing so.

(f) As the administrator of the Unclaimed Property Law, the Controller receives 375,000 claims annually from possible owners of unclaimed property. As part of the claims process, claimants provide a significant number of documents containing personal information relating to themselves or their relatives that would normally be kept confidential by individuals, including driver's licenses, social security cards, bank account statements, wills, trusts, and other similar documents.

(g) The Federal Trade Commission received 4.8 million reports of fraud and identity theft in 2020, up more than 45 percent from the 3.3 million reports received in 2019. Given this trend, the protection of personal information has never been more vital.

(h) The disclosure of personal information may also discourage owners from claiming property held by the Controller.

(i) The disclosure of many of the documents provided by claimants of unclaimed property is of minimal public interest, while the potential for fraud and identity theft is substantial. Accordingly, it is apparent that such records should be exempt from disclosure under the California Public Records Act.

(j) As the administrator of the Unclaimed Property Law, in accordance with Section 1571 of the Code of Civil Procedure, the Controller conducts the examination of records of any person that the Controller has reason to believe is a holder of unclaimed

property. The Controller also hires third-party auditors to conduct such examinations on its behalf. In conducting such examinations, the Controller and third-party auditors review extensive financial records of holders of unclaimed property.

(k) Under the current law, records of holders that the Controller or third-party auditors obtain possession of in the course of an examination may be subject to disclosure under the California Public Records Act. Holders are often private businesses that have a strong interest in maintaining confidentiality of their financial records. Accordingly, the records of holders containing information that is unrelated to property that has escheated to the state should be exempt from disclosure under the California Public Records Act.

SEC. 2. Section 1577 of the Code of Civil Procedure is amended to read:

1577. (a) In addition to any damages, penalties, or fines for which a person may be liable under other provisions of law, any person who fails to report, pay, or deliver unclaimed property within the time prescribed by this chapter, unless that failure is due to reasonable cause, shall pay to the Controller interest at the rate of 12 percent per annum on that property or value thereof from the date the property should have been reported, paid, or delivered.

(b) If a holder reports and pays or delivers unclaimed property within the time prescribed by this chapter, but files a report that is not in substantial compliance with the requirements of Section 1530 or 1532, the interest payable on the unclaimed property that is paid or delivered in the time prescribed by this chapter shall not exceed ten thousand dollars (\$10,000).

(c) The Controller may waive the interest payable under this section if the holder's failure to file a report that is in substantial compliance with the requirements of Section 1530 or 1532 is due to reasonable cause.

(d) The Controller shall waive the interest payable under this section if the holder participates in and completes all of the requirements of the California Voluntary Compliance Program under Section 1577.5, subject to the right to reinstate, as specified.

SEC. 3. Section 1577.5 of the Code of Civil Procedure is repealed.

SEC. 4. Section 1577.5 is added to the Code of Civil Procedure, to read:

1577.5. (a) This section shall be known, and may be cited, as the "California Voluntary Compliance Program."

(b) The Controller may establish a program for the voluntary compliance of holders for the purpose of resolving unclaimed property that is due and owing to the state under this chapter.

(c) A holder that has not reported unclaimed property in accordance with Section 1530 may request to enroll in the program using a form prescribed by the Controller.

(d) The Controller, in their discretion, may enroll eligible holders in the program. A holder is ineligible to participate in the program if any of the following apply:

(1) At the time the holder's request to enroll is received by the Controller, the holder is the subject of an examination of records or has received notification from the Controller of an impending examination under Section 1571.

(2) At the time the holder's request to enroll is received by the Controller, the holder is the subject of a civil or criminal prosecution involving compliance with this chapter.

(3) The Controller has notified the holder of an interest assessment under Section 1577 within the previous five years, and the interest assessment remains unpaid at the time of the holder's request to enroll. 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.

(4) The Controller has waived interest assessed against the holder under this section within the previous five years. Notwithstanding the foregoing, if a holder acquired or merged with another entity within the five-year period, 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.

(e) The Controller shall waive interest assessed under Section 1577 for a holder enrolled in the program if the holder does all the following within the prescribed timeframes and satisfies the other requirements of this section:

(1) Enrolls and participates in an unclaimed property educational training program provided by the Controller within three months after the date on which the Controller notified the holder of their enrollment in the program, unless the Controller sets a different date.

(2) Reviews their books and records for unclaimed property for at least the previous 10 years, starting from June 30 or the fiscal yearend preceding the date on which the report required by paragraph (4) is due.

(3) Makes reasonable efforts to notify owners of reportable property by mail or electronically, as applicable, pursuant to Sections 1513.5, 1514, 1516, or 1520, no less than 30 days prior to submitting the report required by paragraph (4).

(4) Reports to the Controller as required by subdivisions (b), (c), and (e) of Section 1530 within six months after the date on which the Controller notified the holder of their enrollment in the program. Upon written request by the enrolled holder, the Controller may postpone the reporting date for a period not to exceed 18 months after the date on which the Controller notified the holder of their enrollment in the program.

(5) Submits to the Controller an updated report and pays or delivers to the Controller all escheated property specified in the report as required by Section 1532, no sooner than seven months and no later than seven months and 15 days after the Controller received the report submitted pursuant to paragraph (4).

(f) The Controller may reinstate interest waived under subdivision (d) of Section 1577 if the holder does not pay or deliver all escheated property specified in the report submitted pursuant to and within the timeframe prescribed by paragraph (5) of subdivision (e).

(g) The Controller may adopt guidelines and forms that provide specific procedures for the administration of the program.

(h) This section shall become operative only upon an appropriation by the Legislature in the annual Budget Act for this purpose.

SEC. 5. Section 1582 of the Code of Civil Procedure is amended to read:

1582. (a) (1) An agreement to locate, deliver, recover, or assist in the recovery of property reported under Section 1530 is invalid if either of the following apply:

(A) The agreement is entered into between the date a report is filed under subdivision (d) of Section 1530 and the date the property is paid or delivered under Section 1532.

(B) The agreement requires the owner to pay a fee or compensation prior to approval of the claim and payment of the recovered property to the owner by the Controller.

(2) An agreement to locate, deliver, recover, or assist in the recovery of property reported under Section 1530 made after payment or delivery under Section 1532 is valid if it meets all of the following requirements:

(A) The agreement is in writing and includes a disclosure of 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 the property from the Controller.

(B) The agreement is signed by the owner after receipt of the disclosure described in subparagraph (A).

(C) The fee or compensation agreed upon is not in excess of 10 percent of the recovered property.

(3) This subdivision shall not be construed to prevent an owner from asserting, at any time, that an agreement to locate property is based upon an excessive or unjust consideration.

(b) Notwithstanding any other provision of law, records of the Controller's office pertaining to unclaimed property are not available for public inspection or copying until after publication of notice of the property or, if publication of notice of the property is not required, until one year after delivery of the property to the Controller.

SEC. 6. Section 7925.015 is added to the Government Code, to read:

7925.015. This division does not require the disclosure of records that the Controller and third-party auditors obtain the possession of as a result of an examination of records pursuant to Section 1571 of the Code of Civil Procedure, other than records of property that should have been reported to the Controller as unclaimed property.

SEC. 7. Section 7927.425 is added to the Government Code, to read:

7927.425. This division does not require the disclosure of the following records and information provided to the Controller's office:

(a) Records related to statements of personal worth or personal financial data, including, but not limited to, wills, trusts, account statements, earnings statements, or other similar records.

(b) Personal information, as defined by subdivision (a) of Section 1798.3 of the Civil Code, within records, including, but not limited to:

(1) Social security number.

(2) Date of birth.

(3) Federal employer identification number, until the Controller has made payment of the property in full to the owner.

(4) Account number, until the Controller has made payment of the property in full to the owner.

(5) Check number, until the Controller has made payment of the property in full to the owner.

SEC. 8. The Legislature finds and declares that Sections 6 and 7 of this act, which add Sections 7925.015 and 7927.425 of the Government Code, respectively, impose limitations on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The interest of holders of unclaimed property, which are often private businesses, in their financial records is protected by limiting disclosure to the public, and it is necessary to maintain the confidentiality of private businesses' financial records. In addition, it is necessary to limit the public's right of access to the personal information of claimants and owners under the Unclaimed Property Law in order to protect the privacy of individuals and protect against fraud and identity theft.