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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Cardenas

February 26, 1997

An act to amend ~~Section 1540~~ of *Sections 315, 348, 1513, 1522, 1540, 1571, 1572, and 1576* of, and to add *Sections 1572.5 and 1578* to, the Code of Civil Procedure, relating to unclaimed property.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as amended, Cardenas. Unclaimed property.

Existing law, known as the Unclaimed Property Law, provides for the escheat to the state of, among other property, certain personal property held or owing in the ordinary course of the holder's business. Existing law authorizes the Controller, or upon the request of the Controller, one of certain licensing or regulatory agencies, to examine the

records of a holder of property of another to determine if the holder is in compliance with the Unclaimed Property Law. Existing law authorizes the Controller to bring an action to enforce specified provisions of the Unclaimed Property Law and provides for the imposition of penalties and interest against holders who willfully fail to comply with the Unclaimed Property Law.

~~This bill would require the Controller to adopt regulations and forms that provide specific instructions to assist owners in filing claims for unclaimed property.~~

This bill would prohibit the Controller or a delegated agency from hiring contingent fee examiners and provide that when the Controller or delegated agency completes its examination, (1) it shall notify the holder of the results and of the holder's right to appeal, and (2) the records examined, and the time period covered by the records, shall be closed and not subject to reexamination. The bill would authorize the Controller to enter into specified closing agreements with holders; to negotiate with holders to settle disputes regarding an examination of the holder's records or any other matter that is or could be the subject of an action by the Controller; and to, among other things, reduce the amount of interest, penalties, or other amounts that have been assessed against a holder. The bill would provide that if a person is subject to 2 penalties, as specified, with respect to the same property, the person shall be required to pay only the greater penalty. The bill would direct the Controller to adopt regulations to, among other things, establish forms and procedures for appeals, closing agreements, and relief from interest and penalties.

Existing law provides that specified accounts or deposits held by banks or financial organizations escheat to the state if, for more than 3 years, the owner fails to take any of 3 specified actions with respect to the account or deposit. Existing law also allows these entities to withhold from specified escheated accounts or deposits reasonable service charges, regularly imposed, as specified.

This bill would add, as a 4th condition to the escheat of accounts or deposits, that the owner did not own another deposit or account with the holder that satisfies specified conditions. The bill would authorize business associations to



withhold reasonable service charges from escheated sums payable on money orders and would, in all cases, limit the amount of charges or fees that may be withheld to conscionable amounts, regularly charged, and authorized by a written contract with the owner.

Existing law provides periods of limitations for the commencement of actions for the recovery of real property or the issues or profits thereof.

This bill would prescribe a specified 10-year period of limitation that would be applicable to specified actions by the Controller under the Unclaimed Property Law.

The bill states that the act shall be known as the Unclaimed Property Holders Bill of Rights.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known as the*
2 *Unclaimed Property Holders Bill of Rights.*

3 SEC. 2. *Section 315 of the Code of Civil Procedure is*
4 *amended to read:*

5 315. ~~The people of this State will~~ *Except as otherwise*
6 *provided in subdivision (d) of Section 1572, the people of*
7 *this state shall not sue any person for or in respect to any*
8 *real property, or the issues or profits thereof, by reason of*
9 *the right or title of the people to the same, unless:*

10 ~~1. Such~~ *them, unless either of the following conditions*
11 *exists:*

12 (a) *The right or title shall have accrued within ~~ten~~ 10*
13 *years before any action or other proceeding for the ~~same~~*
14 *real property is commenced; ~~or,~~*

15 ~~2. The.~~

16 (b) *The people, or those from whom they claim, shall*
17 *have received the rents and profits of ~~such~~ the real*
18 *property, or of some part thereof, within the ~~space of ten~~*
19 *10 preceding years.*

20 SEC. 3. *Section 348 of the Code of Civil Procedure is*
21 *amended to read:*



1 348. (a) To actions brought to recover money or
2 other property deposited with any bank, banker, trust
3 company, building and loan association, or savings and
4 loan society or evidenced by a certificate issued by an
5 industrial loan company or credit union there is no
6 limitation.

7 (b) *This section shall not apply to actions by the*
8 *Controller pursuant to Section 1572 if subdivision (d) of*
9 *that section is applicable.*

10 (c) This section shall not apply to banks, bankers, trust
11 companies, building and loan associations, industrial loan
12 companies, credit unions, and savings and loan societies
13 ~~which~~ *that* have become insolvent and are in process of
14 liquidation and in—~~such~~ *those* cases the statute of
15 limitations shall be deemed to have commenced to run
16 from the beginning of the process of liquidation;
17 provided, however, nothing herein contained shall be
18 construed so as to relieve any stockholder of any banking
19 corporation or trust company from stockholders' liability
20 as shall at any time, be provided by law.

21 *SEC. 4. Section 1513 of the Code of Civil Procedure is*
22 *amended to read:*

23 1513. Subject to Sections 1510 and 1511, the following
24 property held or owing by a business association escheats
25 to this state:

26 (a) Except as provided in subdivision (f), any demand,
27 savings, or matured time deposit, or account subject to a
28 negotiable order of withdrawal, made with a banking
29 organization, together with any interest or dividends
30 thereon, excluding, from demand deposits and accounts
31 subject to a negotiable order of withdrawal only, any
32 reasonable service charges ~~which~~ *that* may lawfully be
33 withheld and ~~which~~ *that* do not (where made in this
34 state) exceed those set forth in schedules filed by the
35 banking organization from time to time with the
36 Controller, when the owner, for more than three years,
37 has not done any of the following:

38 (1) Increased or decreased the amount of the deposit,
39 or presented the passbook or other similar evidence of the
40 deposit for the crediting of interest.



1 (2) Corresponded in writing with the banking
2 organization concerning the deposit.

3 (3) Otherwise indicated an interest in the deposit as
4 evidenced by a memorandum or other record on file with
5 the banking organization.

6 *A deposit or account shall not, however, escheat to the*
7 *state if, during the previous three years, the owner has*
8 *owned another deposit or account with the banking*
9 *organization and, with respect to that deposit or account,*
10 *the owner has done any of the acts described in paragraph*
11 *(1), (2), or (3) of this subdivision, and the banking*
12 *organization has communicated in writing with the*
13 *owner, at the address to which communications*
14 *regarding that deposit or account are regularly sent, with*
15 *regard to the deposit or account that would otherwise*
16 *escheat under this subdivision.*

17 No banking organization may discontinue any interest
18 or dividends on any savings deposit because of the
19 inactivity contemplated by this section.

20 (b) Except as provided in subdivision (f), any
21 demand, savings, or matured time deposit, or matured
22 investment certificate, or account subject to a negotiable
23 order of withdrawal, or other interest in a financial
24 organization or any deposit made therewith, and any
25 interest or dividends thereon, excluding, from demand
26 deposits and accounts subject to a negotiable order of
27 withdrawal only, any reasonable service charges ~~which~~
28 *that* may lawfully be withheld and ~~which~~ *that* do not
29 (where made in this state) exceed those set forth in
30 schedules filed by the financial organization from time to
31 time with the Controller, when the owner, for more than
32 three years, has not done any of the following:

33 (1) Increased or decreased the amount of the funds or
34 deposit, or presented an appropriate record for the
35 crediting of interest or dividends.

36 (2) Corresponded in writing with the financial
37 organization concerning the funds or deposit.

38 (3) Otherwise indicated an interest in the funds or
39 deposit as evidenced by a memorandum or other record
40 on file with the financial organization.



1 *A deposit or account shall not, however, escheat to the*
2 *state if, during the previous three years, the owner has*
3 *owned another deposit or account with the financial*
4 *organization and, with respect to that deposit or account,*
5 *the owner has done any of the acts described in paragraph*
6 *(1), (2), or (3) of this subdivision, and the financial*
7 *organization has communicated in writing with the*
8 *owner, at the address to which communications*
9 *regarding that deposit or account are regularly sent, with*
10 *regard to the deposit or account that would otherwise*
11 *escheat under this subdivision.*

12 No financial organization may discontinue any interest
13 or dividends on any funds paid toward purchase of shares
14 or other interest, or on any deposit, because of the
15 inactivity contemplated by this section.

16 (c) Any sum payable on a travelers check issued by a
17 business association that has been outstanding for more
18 than 15 years from the date of its issuance, when the
19 owner, for more than 15 years, has not corresponded in
20 writing with the business association concerning it, or
21 otherwise indicated an interest as evidenced by a
22 memorandum or other record on file with the association.

23 (d) Any sum payable on any other written instrument
24 on which a banking or financial organization is directly
25 liable, including, by way of illustration but not of
26 limitation, any draft or certified check, that has been
27 outstanding for more than five years from the date it was
28 payable, or from the date of its issuance if payable on
29 demand, when the owner, for more than five years, has
30 not corresponded in writing with the banking or financial
31 organization concerning it, or otherwise indicated an
32 interest as evidenced by a memorandum or other record
33 on file with the banking or financial organization.

34 (e) Any sum payable on a money order issued by a
35 business association (including a banking or financial
36 organization), that has been outstanding for more than
37 seven years from the date it was payable, or from the date
38 of its issuance if payable on demand, *excluding any*
39 *reasonable service charges that may lawfully be withheld*
40 *and that do not (where made in this state) exceed those*



1 *set forth in schedules filed by the business association*
2 *from time to time with the Controller, when the owner,*
3 *for more than seven years, has not corresponded in*
4 *writing with the business association, banking, or*
5 *financial organization concerning it, or otherwise*
6 *indicated an interest as evidenced by a memorandum or*
7 *other record on file with the business association.*

8 (f) Any funds held by a business association in an
9 individual retirement account or under a retirement plan
10 for self-employed individuals or similar account or plan
11 established pursuant to the internal revenue laws of the
12 United States or of this state, when the owner, for more
13 than three years after the funds become payable or
14 distributable, has not done any of the following:

- 15 (1) Increased or decreased the principal.
- 16 (2) Accepted payment of principal or income.
- 17 (3) Corresponded in writing concerning the property
18 or otherwise indicated an interest.

19 These funds are not payable or distributable within the
20 meaning of this subdivision unless, under the terms of the
21 account or plan, distribution of all or a part of the funds
22 would then be mandatory.

23 (g) For purposes of this section “service charges”
24 means service charges imposed because of the inactivity
25 contemplated by this section.

26 *SEC. 5. Section 1522 of the Code of Civil Procedure is*
27 *amended to read:*

28 1522. No service, handling, maintenance or other
29 charge or fee of any kind ~~which~~ *that* is imposed because
30 of the inactive or unclaimed status contemplated by this
31 chapter, may be deducted or withheld from any property
32 subject to escheat under this chapter, unless specifically
33 permitted by this chapter.

34 Even when specifically permitted by this chapter, ~~such~~
35 *those* charges or fees may not be excluded, withheld or
36 deducted from property subject to this chapter ~~if, under~~
37 ~~its policy or procedure, the holder would not have~~
38 ~~excluded, withheld or deducted such charges or fees in~~
39 ~~the event the property had been claimed by the owner~~
40 ~~prior to being reported or remitted to the Controller~~



1 *unless there is a valid enforceable written contract*
2 *between the holder and the owner under which the*
3 *holder is authorized to impose the charge or fee, the*
4 *holder regularly imposes the charge or fee, the charge or*
5 *fee is not regularly reversed or otherwise canceled, and*
6 *the amount of the charge or fee is conscionable.*

7 SEC. 6. Section 1540 of the Code of Civil Procedure is
8 amended to read:

9 1540. (a) Any person, excluding another state, who
10 claims an interest in property paid or delivered to the
11 Controller under this chapter may file a claim to the
12 property or to the net proceeds from its sale. The claim
13 shall be on a form prescribed by the Controller and shall
14 be verified by the claimant.

15 (b) The Controller shall consider each claim within 90
16 days after it is filed and may hold a hearing and receive
17 evidence. The Controller shall give written notice to the
18 claimant if he or she denies the claim in whole or in part.
19 The notice may be given by mailing it to the address, if
20 any, stated in the claim as the address to which notices are
21 to be sent. If no address is stated in the claim, the notice
22 may be mailed to the address, if any, of the claimant as
23 stated in the claim. No notice of denial need be given if
24 the claim fails to state either an address to which notices
25 are to be sent or an address of the claimant.

26 (c) The Controller shall add interest at the rate of 5
27 percent compounded annually or the current interest
28 rate received upon deposits held in the Pooled Money
29 Investment Account, whichever is lower, to the amount
30 of any claim paid the owner under this section for the
31 period the property was on deposit in the Unclaimed
32 Property Fund. No interest shall be payable for any
33 period prior to January 1, 1977.

34 (d) Any holder who pays to the owner, property that
35 has escheated to the state and that, if claimed from the
36 Controller, would be subject to subdivision (c) may add
37 interest as provided in subdivision (c). This added
38 interest shall be repaid to the holder by the Controller in
39 the same manner as the principal.



1 (e) For the purposes of this section, “owner” means
2 the person who had legal right to the property prior to its
3 escheat, his or her heirs, or his or her legal representative.

4 (f) The Controller shall adopt regulations and forms
5 that shall provide specific instructions to assist owners in
6 filing claims pursuant to this article.

7 *SEC. 7. Section 1571 of the Code of Civil Procedure is*
8 *amended to read:*

9 1571. (a) The Controller may at reasonable times
10 and upon reasonable notice examine the records of any
11 person if the Controller has reason to believe that—~~such~~
12 *the person is a holder who* has failed to report property
13 that should have been reported pursuant to this chapter.

14 (b) When requested by the Controller, ~~such~~ *the*
15 examination shall be conducted by any licensing or
16 regulating agency otherwise empowered by the laws of
17 this state to examine the records of the holder. For the
18 purpose of determining compliance with this chapter, the
19 Commissioner of Financial Institutions is vested with full
20 authority to examine the records of any banking
21 organization and any savings association doing business
22 within this state but not organized under the laws of or
23 created in this state. *The Controller or other licensing or*
24 *regulating agency shall be prohibited from hiring*
25 *contingent fee examiners or auditors for purposes of this*
26 *chapter with respect to audits of either records or*
27 *property within this state.*

28 (c) *The Controller shall adopt regulations designed to*
29 *ensure ethical and fair audits by third-party fee examiners*
30 *or auditors who are hired by the Controller with respect*
31 *to audits allowed under this chapter.*

32 (d) *When the Controller, or other licensing or*
33 *regulating agency, completes its examination of the*
34 *records of any person, it shall notify the person within 90*
35 *days, in writing, of the results of the examination and the*
36 *person’s rights to dispute or appeal those results within 90*
37 *days of notification.*

38 (e) *When the Controller, or other licensing or*
39 *regulating agency, completes its examination of the*
40 *records of any person, as evidenced by sending the notice*



1 required by subdivision (d) or by failure of the
2 Controller, or other licensing or regulatory entity, to
3 contact the person in writing for a period of 360 days after
4 the beginning of the examination, the records examined,
5 and the period of time covered by those records, shall be
6 deemed closed and may not be reexamined by the
7 Controller, or other licensing or regulatory agency, for
8 purposes of this article.

9 (f) The Controller, or other licensing or regulating
10 agency, may also, in its discretion, enter into a closing
11 agreement with a holder, if warranted by the particular
12 facts of the holder's case, which agreement shall have the
13 effect of closing, for purposes of a record examination
14 under this article, all records of the holder covering a
15 specified period of time.

16 (g) The Controller shall adopt regulations, on or
17 before July 1, 1999, establishing forms and procedures to
18 enable a person to dispute or appeal the results of any
19 record examination conducted pursuant to this section or
20 to request a closing agreement for an unexamined period,
21 as provided in subdivision (f).

22 SEC. 8. Section 1572 of the Code of Civil Procedure is
23 amended to read:

24 1572. (a) The ~~State~~ Controller may bring an action in
25 a court of appropriate jurisdiction, as specified in this
26 section, for any of the following purposes:

27 (1) To enforce the duty of any person under this
28 chapter to permit the examination of the records of ~~such~~
29 ~~that~~ person.

30 (2) For a judicial determination that particular
31 property ~~is subject to escheat by this~~ has escheated to the
32 state pursuant to this chapter.

33 (3) To enforce the delivery of any property to the
34 ~~State~~ Controller as required under this chapter.

35 (b) The ~~State~~ Controller may bring an action under
36 this chapter in any court of this state of appropriate
37 jurisdiction in any of the following cases:

38 (1) Where the holder is any person domiciled in this
39 state, or is a government or governmental subdivision or
40 agency of this state.



1 (2) Where the holder is any person engaged in or
2 transacting business in this state, although not domiciled
3 in this state.

4 (3) Where the property is tangible personal property
5 and is held in this state.

6 (c) In any case where no court of this state can obtain
7 jurisdiction over the holder, the ~~State~~ Controller may
8 bring an action in any federal or state court with
9 jurisdiction over the holder.

10 (d) *Any action under this chapter relating, directly or*
11 *indirectly, to the examination of a person's or holder's*
12 *records, a judicial determination that particular property*
13 *has escheated to the state pursuant to this chapter, or the*
14 *enforcement of delivery of any property as required*
15 *under this chapter with respect to funds or other*
16 *property that escheated to the state or that were required*
17 *to be included in a report filed pursuant to Section 1530,*
18 *shall be commenced not later than 10 years after the date*
19 *an adequate report is filed with the Controller for the*
20 *fiscal year in which the funds or other types of property*
21 *were subject to escheat under this chapter. This 10-year*
22 *statute of limitations shall also apply to an adequate*
23 *report filed with the Controller by a person who does not*
24 *hold unclaimed property subject to escheat in a fiscal*
25 *year. A person who fails to file an adequate report*
26 *whether unclaimed property was subject to escheat in*
27 *that year, shall remain open to audit for an unlimited*
28 *period with respect to the period for which no report was*
29 *filed. If a late but adequate report is filed, the running of*
30 *the 10-year limitation period shall commence from the*
31 *date of filing. In no event shall the 10-year limitation*
32 *period apply with respect to a duty to turn over*
33 *unclaimed property to the state notwithstanding any*
34 *apparently adequate report if the Controller or other*
35 *licensing or regulatory agency requested to examine the*
36 *records of a holder pursuant to Section 1571 demonstrates*
37 *with specific allegations and evidence to the satisfaction*
38 *of a court of appropriate jurisdiction that the report*
39 *contained a knowing omission of actual, existing*
40 *unclaimed property, at the time the report was filed.*

1 (e) Subdivision (d) shall apply to all reports filed on or
2 after January 1, 2000. The Controller and any other
3 licensing or regulatory agency otherwise authorized by
4 state law to examine the records of a holder or alleged
5 holder shall enact regulations defining the elements that
6 must be present for a report to be deemed adequate for
7 purposes of this subdivision. These regulations shall
8 address content of qualified reports but shall not require
9 an audit as a precondition for qualification as adequate.
10 The Controller and any other licensing or regulatory
11 agency otherwise authorized to examine the records of a
12 holder or alleged holder shall adopt regulations
13 specifying guidelines for the determination of whether a
14 report contains knowing omissions of actual, existing
15 unclaimed property.

16 (f) The limitation period described in this section shall
17 not apply to any property which the holder possessed
18 pursuant to a fiduciary relationship to the owner.
19 Examples of this property include, but are not limited to,
20 property described in Sections 1513 and 1518. For
21 purposes of this subdivision, the term “fiduciary
22 relationship” shall be given a liberal interpretation.

23 SEC. 9. Section 1572.5 is added to the Code of Civil
24 Procedure, to read:

25 1572.5. The Controller may, both prior to and after
26 commencing any action under Section 1572, meet and
27 negotiate with any person regarding the results of an
28 examination of records pursuant to Section 1571 or any
29 other matter that is, or may be, the subject of an action
30 under Section 1572. This authority includes, but is not
31 limited to, the power to negotiate a reduction in the
32 amount of any alleged liability of a person under this
33 chapter for interest, penalties or any other amounts.

34 SEC. 10. Section 1576 of the Code of Civil Procedure
35 is amended to read:

36 1576. (a) Any person who willfully fails to render any
37 report or perform other duties, including use of the
38 report format described in Section 1530, required under
39 this chapter shall be punished by a fine of one hundred
40 dollars (\$100) for each day ~~such~~ the report is withheld or



1 ~~such~~ the duty is not performed, but not more than ten
2 thousand dollars (\$10,000).

3 (b) Any person who willfully refuses to pay or deliver
4 escheated property to the Controller as required under
5 this chapter shall be punished by a fine of not less than five
6 thousand dollars (\$5,000) nor more than fifty thousand
7 dollars (\$50,000).

8 (c) No person shall be considered to have willfully
9 failed to report, pay, or deliver escheated property, or
10 perform other duties unless he or she has failed to respond
11 within a reasonable time after notification by certified
12 mail by the Controller's office of his or her failure to act.

13 (d) *If any person is determined to be punishable*
14 *under subdivisions (a) and (b), with respect to the same*
15 *property, that person shall be required to pay only the*
16 *greater of the two penalties.*

17 *SEC. 11. Section 1578 is added to the Code of Civil*
18 *Procedure, to read:*

19 *1578. (a) The Controller may, in its discretion, grant*
20 *relief from penalties and interest imposed against a*
21 *person under this article upon adequate showing by the*
22 *person that the relief is warranted.*

23 *(b) The Controller shall adopt regulations, on or*
24 *before July 1, 1999, establishing standards and forms for*
25 *relief from penalties and interest pursuant to this section.*

26 *SEC. 12. This act shall not be construed to affect any*
27 *civil action or proceeding pending on or before January*
28 *1, 1999. This act shall only apply prospectively.*

