

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/SB 264

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Florida Workers' Compensation Joint Underwriting Association

DATE: March 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson/Knudson	Knudson	BI	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 264 exempts the Florida Workers' Compensation Joint Underwriting Association (JUA) from reporting and remittance of unclaimed property (e.g., dividends or premiums due employers) to the Department of Financial Services (DFS).

Within 12 months after the failed initial delivery of the dividend or premium refund the JUA must:

- Conduct a diligent search to locate the former insured.
- Notify the insurance agency on the policy of the premium dividend or refund.
- If the unclaimed dividend or premium refund is valued at \$250 or more, make at least one active notification attempt to directly contact a former insured after completing the diligent search.

The JUA must publish and maintain on its website a list of the names of former insureds who have unclaimed dividends or premium refunds and the amount owed.

A former insured may claim the dividend or premium refund from the JUA at any time.

The JUA is a statutorily-created nonprofit, self-funding entity that is the insurer of last resort for employers in Florida who are unable to secure coverage in the voluntary market. The Florida Disposition of Unclaimed Property Act serves the interest of missing owners of property while the people of the state derive a financial benefit from the unclaimed and abandoned property

until the property is claimed, if ever. Currently, the Florida Disposition of Unclaimed Property Act requires holders, such as businesses and governmental entities, of unclaimed property to remit such proceeds to the DFS. The DFS deposits such proceeds into the Department of Education School Trust Fund, except for a \$15 million balance that is retained in the Unclaimed Property Trust Fund for the prompt payment of verified claims to owners or heirs of owners.

II. Present Situation:

Florida's Disposition of Unclaimed Property Act

Unclaimed property constitutes any funds or other property, tangible or intangible, that have remained unclaimed by the owner for a certain specified number of years.¹ Common types of unclaimed property are dormant savings or checking accounts, unclaimed insurance proceeds, stocks, bonds, dividends, uncashed checks, refunds, credit balances, and contents of abandoned safe deposit boxes at financial institutions.² The Division of Unclaimed Property, within the Department of Financial Services (DFS), administers Florida's Disposition of Unclaimed Property Act.³ The DFS is responsible for receiving property from holders, safeguarding this property, locating the rightful owners, and returning property to them.

Owners have the right to claim their property at any time. Financial institutions, insurance companies, governmental entities, and other holders of unclaimed property must report and submit unclaimed property to the DFS before May 1 of each year for the preceding calendar year. Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.⁴ Once the prescribed period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1 for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year.⁵ The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.⁶ The report, which includes account information, is uploaded to the DFS unclaimed property website, and the unclaimed property is available to be claimed.⁷

The reporting provisions of s. 717.117, F.S., do not apply to the following circumstances:

- Unclaimed patronage refunds as provided for by contract or through bylaw provisions of entities organized under ch. 425, F.S., or that are exempt from ad valorem taxation pursuant to s. 196.2002, F.S.
- Intangible property held, issued, or owing by a business association subject to the jurisdiction of the United States Surface Transportation Board or its successor federal agency if the apparent owner of such intangible property is a business association. The holder of such

¹ See s. 717.117, F.S.

² See Department of Financial Services, FLTreasureHunt.Gov General Questions. <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last accessed March 6, 2019).

³ Chapter 717, F.S.

⁴ Section 717.117(4), F.S.

⁵ Section 717.117(3), F.S.

⁶ Section 717.117(1), F.S.

⁷ DFS Unclaimed property website available at <https://www.fltreasurehunt.gov/> (last viewed Feb. 28, 2019).

property does not have any obligation to report, to pay, or to deliver such property to the DFS.

- Credit balances, overpayments, refunds, or outstanding checks owed by a health care provider to a managed care payor with whom the health care provider has a managed care contract, if the credit balances, overpayments, refunds, or outstanding checks become due and owing pursuant to the managed care contract.⁸

Current law places an obligation on the state, DFS, to notify owners of unclaimed property accounts valued at over \$250, in a cost-effective manner, including through attempts to contact the owner directly.⁹ The DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and the state website.

Five years is the dormancy period for most types of property, and it is the default dormancy period for any property types for which a dormancy period is not provided in statute.¹⁰ The dormancy period for all property types of any governmental entity, or subdivision thereof, is one year, as is the case with property held by any government entity or subdivision thereof, or statutorily-created entity such as the JUA or Citizens Insurance (created by legislature, governed by the Cabinet or by a board appointed by elected officials).¹¹

All funds from unclaimed property, including proceeds from the sale of safe deposit items and securities, are deposited into the Abandoned Property Trust Fund. The trust fund entirely finances program operations and pays owner claims. The department retains a balance, not to exceed \$15 million, in the trust fund to enable prompt claim payments. The remaining unclaimed funds are transferred into the State School Fund to support public education. The State School Fund will receive an estimated \$129.4 million in unclaimed property during the 2018-2019 fiscal year.¹²

Florida Workers' Compensation Joint Underwriting Association

The Legislature created the Workers' Compensation Joint Underwriting Association¹³ (JUA) as a nonprofit, self-funding entity that is the insurer of last resort for employers in Florida who are unable to secure coverage in the voluntary market.¹⁴ The board of the JUA is composed of a nine-member board of governors appointed by the Financial Services Commission.¹⁵

⁸ Section 624.4621, F.S., relating to the regulation of group self-insurance funds, provides another exception. The section provides that any dividend or premium refund that cannot be paid to the applicable member or policyholder or former member or policyholder of the group self-insurer because the former member or policyholder cannot be reasonably located becomes the property of the group self-insurer.

⁹ Section 717.118(1), F.S.

¹⁰ Section 717.102, F.S.

¹¹ Section 717.113, F.S., provides that all intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than 1 year after it became payable or distributable is presumed unclaimed.

¹² See Section V., Fiscal Impact Statement C. Public Sector Impact in this analysis.

¹³ The JUA was created in 1993 and was the successor of the Florida Workers' Insurance Plan. Ch. 93-415, L.O.F.

¹⁴ According to the JUA, it has applied for federal tax exemption, status as of July 1, 2007, and the requested ruling is pending. Correspondence on file with Senate Banking and Insurance Committee.

¹⁵ Section 627.311(5)(b), F.S.

The JUA establishes three tiers of employers, grouped according to their loss experience, for purposes of establishing rates. Tier One employers have good loss experience, Tier Two employers have loss experience inferior to those in Tier One, and Tier Three employers have loss experience that do not qualify them for Tier One or Tier Two.¹⁶ For 2019, the JUA will charge rates based on premiums in the voluntary market, adjusted upward by 5 percent for Tier One employers, 20 percent for Tier Two employers, and 42 percent for Tier Three employers.¹⁷

Prior to the workers’ compensation reforms in 2003, the JUA experienced a significant increase in the number of policies due to availability and affordability issues in the private market. The 2003 reforms revised the JUA to address affordability and availability for small employers and charitable and nonprofit organizations by creating a new subplan for such employers, limiting premiums to no more than 125 percent of the rate in the voluntary market, and authorizing assessments against employers if the subplan experienced a deficit.¹⁸ According to the JUA no assessments have been levied on employers.

Policyholders of the JUA sometimes receive dividends and premium refunds, which are provided 7 years after the policy year. If the insured cannot be found, the JUA must remit the property to DFS once it has been unclaimed for more than 1 year after it became payable or distributable pursuant to s. 717.113, F.S.

Financial Condition of the FWCJUA

For calendar year 2017, the JUA recognized a surplus of \$87,937,954. As of September 30, 2018, the JUA recognized a \$91,938,906, surplus. This information is delineated below by subplan and tier, as follows:

Subplan/Tier	Effective Date of Subplan/Tier	September 30, 2018 Total Surplus or Deficit	2017 Total Surplus or (Deficit)
Subplans P, A, and C	January 1, 1994	\$39,883,694	\$39,171,914
Subplan D	July 1, 2003	(\$118,309)	(\$118,309) ¹⁹
Tier 1	July 1, 2004	\$6,849,573	\$5,961,950
Tier 2	July 1, 2004	\$15,038,034	\$12,962,723
Tier 3	July 1, 2004	\$30,285,914	\$29,959,676
Net Surplus or Deficit		\$91,938,906	\$87,937,954

III. Effect of Proposed Changes:

Section 1 amends s. 627.311, F.S., to provide that any dividend or premium refund issued by the Florida Workers’ Compensation Joint Underwriting Association that cannot be paid to a former

¹⁶ Section 627.311(5)(c)22., F.S.

¹⁷ See Office of Insurance Regulation, Letter from Sandra Starnes, Office of Insurance Regulation Director Property & Casualty Product Review, to Michael K. Clearly, Florida Workers’ Compensation Joint Underwriting Association Operations Manager, regarding OIR File Number FWC 18-12920 (Dec. 19, 2018). <https://www.fwcjua.com/Home/DisplayDocument?intDocId=5353> (last accessed March 6, 2019).

¹⁸ See s. 35, Ch. 2003-412, L.O.F.

¹⁹ The JUA estimates that total state funds needed to fund the Subplan D deficit through the contingency reserve are approximately \$4.2 million, which is \$3.7 million less than the \$7.9 million already appropriated and received from the Florida Legislature, and thus, no additional cash needs are anticipated. See correspondence from WCJUA to the OIR, dated July 13, 2018, on file with Senate Committee on Banking and Insurance.

insured because the former insured cannot be reasonably located would be retained by the WCJUA for future use.

Within 12 months after the failed initial delivery of the dividend or premium refund the JUA must:

- Conduct a diligent search to locate the former insured using a reasonable and prudent method to locate the owner. Examples of a diligent search include searching a nationwide database using a taxpayer identification number or social security number, cross indexing with other records related to the owner, mailing to the last known address unless known to be inaccurate, or engaging a licensed agency or company capable of performing the forgoing actions.
- Notify the insurance agency on the policy of the premium dividend or refund. Such notice does not constitute notice to the owner or make the agency responsible for the unclaimed property.
- If the unclaimed dividend or premium refund is valued at \$250 or more, make at least one active notification attempt to directly contact a former insured after completing the diligent search. An active notification attempt does not include publication in a newspaper, on television, on the Internet, or through other promotional efforts and items.

The JUA must publish and maintain on its website a list of the names of former insureds who have unclaimed dividends or premium refunds and the amount owed.

A former insured may claim the dividend or premium refund from the JUA at any time.

Section 2 provides this act takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The retention by the JUA of unclaimed property will reduce the likelihood of an assessment of policyholders of the JUA or in the private market in the event the JUA runs a deficit. To date, the JUA has never had to assess policyholders.

C. Government Sector Impact:

The bill will cause an indeterminate reduction in State School Trust Fund monies available to fund education. The DFS estimates an average annual reduction in money remitted to the Bureau of Unclaimed Property during the next three fiscal years of \$321,000. The Bureau of Unclaimed Property within DFS provided the following information regarding unclaimed property remitted by the JUA:²⁰

Report Year	Total Accounts	Total Value	Claimed Accounts ²¹	Value of Claimed Accounts
2013	0	\$0	0	\$0
2014	17	\$31,654.16	3	\$16,407.37
2015	99	\$228,649.46	29	\$94,442.44
2016	43	\$170,218.34	16	\$96,516.19
2017	415	\$565,353.39	0	\$0

The State School Trust Fund is funded through transfers of money from the Bureau of Unclaimed Property within the DFS. The Office of Economic and Demographic Research estimated that the trust fund will receive \$129.4 million of its \$131.4 million in total funds from the Bureau of Unclaimed Property in fiscal year 2018-2019.²² The Legislature appropriated from the trust fund \$32.8 million to the Florida Education Finance Program and \$86.2 million for class size reduction.²³

VI. Technical Deficiencies:

None.

²⁰ See Department of Financial Services, *Department of Financial Services (DFS) 2019 Legislative Bill Analysis for SB 264*, pg. 1, (Jan. 28, 2019).

²¹ The 2017 accounts were received on January 23, 2019. The DFS chart is dated January 28, 2019. See Department of Financial Services, *Department of Financial Services (DFS) 2019 Legislative Bill Analysis for SB 264*, (Jan. 28, 2019).

²² Office of Economic and Demographic Research, State School Trust Fund Financial Outlook Statement (March 1, 2019); http://edr.state.fl.us/Content/revenues/outlook-statements/state-school-tf/190301_SSTFoutl.pdf (last accessed March 6, 2019).

²³ See *id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.311 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance Committee on March 11, 2019:

- Requires the JUA to conduct a diligent search to locate the former insured; notify the insurance agency on the policy of the premium dividend or refund; and if the unclaimed dividend or premium refund is valued at \$250 or more, make at least one active notification attempt to directly contact a former insured.
- Requires the JUA to publish and maintain on its website a list of the names of former insureds who have unclaimed dividends or premium refunds and the amount owed.
- Provides that a former insured may claim the dividend or premium refund from the JUA at any time.

- B. **Amendments:**

None.