

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Florida Workers' Compensation Joint Underwriting Association, Inc.
SPONSOR(S): Insurance & Banking Subcommittee; Gregory
TIED BILLS: IDEN./SIM. **BILLS:** SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Lloyd	Luczynski
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Workers' Compensation Joint Underwriting Association (FWCJUA) is the market of last resort for workers' compensation and employer's liability coverage. It is a nonprofit, self-funding entity, governed by a nine-member board, to act as Florida's residual market for workers' compensation coverage. FWCJUA operates as an insurance company. When warranted, FWCJUA issues dividends and premium refunds to policyholders. Because of the nature of many FWCJUA policyholders, former insureds occasionally cannot be found and the dividend or premium refund goes unclaimed. Currently, FWCJUA reports and delivers the unclaimed dividend or premium refunds, along with the former insured's name, last known address, and other information to the Department of Financial Services, Division of Unclaimed Property (DFS).

DFS is responsible for receiving unclaimed property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations governing recovery of unclaimed property delivered to DFS. Rightful owners may claim their property at any time and at no cost. If physical property remains unclaimed, the property may be liquidated at public auction. All funds, including auction proceeds, are deposited by DFS into the Unclaimed Property Trust Fund. Funds in excess of the amount necessary for DFS to satisfy property recovery claims is transferred to the State School Fund to be used for public education.

The bill authorizes FWCJUA to retain unclaimed dividends or premium refunds rather than reporting and delivering the funds to DFS as unclaimed property, subject to the following conditions:

- Within 12 months of the failure of a dividend or premium refund to be disbursed to a former insured, FWCJUA must:
 - Conduct a diligent search to locate the former insured;
 - Notify the agent on the policy; and
 - For unclaimed dividends or premium refunds of \$250 or more, make one active attempt to directly contact the former insured using the information from the diligent search.
- FWCJUA must list all unclaimed dividends and premium discounts on their web page.
- The unclaimed dividends and premium refunds of former FWCJUA insureds may be claimed at any time.

The bill has an effect on state revenue and expenditures and no effect on local government revenue and expenditures. It has no effect on the private sector.

The bill is effective July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Workers' Compensation Joint Underwriting Association, Inc.

Since 1994,¹ the Florida Workers' Compensation Joint Underwriting Association (FWCJUA) is the market of last resort for workers' compensation and employer's liability coverage. It is a nonprofit, self-funding entity, governed by a nine-member board, to act as Florida's residual market for workers' compensation coverage.² The board is comprised of nine members, selected as follows: three members appointed by the Financial Services Commission;³ two members representing the top 20 domestic insurers writing workers' compensation; two members representing the top 20 foreign insurers writing workers' compensation; one person appointed by the largest property and casualty insurance agents' association; and the Insurance Consumer Advocate for the Department of Financial Services (DFS). FWCJUA operates as an insurance company underwriting policies and premium, directly carrying risks, managing losses and surplus, etc.⁴

FWCJUA, as a residual market mechanism, is exempt from many provisions of the Florida Insurance Code⁵ that are applicable to insurers in the voluntary market, such as surplus and solvency requirements. However, FWCJUA is subject to market conduct examinations pursuant to the Office of Insurance Regulation's (OIR) authority⁶ to determine whether the entity is complying with applicable provisions of the Florida Insurance Code and the Workers' Compensation Law.⁷ In addition, FWCJUA's plan of operation and any changes to the plan are subject to the approval of OIR.⁸

Only employers that cannot find coverage in the voluntary market are eligible for coverage from FWCJUA. In calendar year 2017, FWCJUA's market share was less than 1 percent of Florida direct written premium with 2,558 Florida policyholders obtaining coverage through FWCJUA.⁹ As of January 31, 2019, FWCJUA had 2,159 policies in force associated with \$32.9 million in total estimated annual premium.¹⁰

FWCJUA has a three-tier rating plan. Tier 1 is for employers with good loss experience; Tier 2 is for employers with moderate loss experience and non-rated new employers; and Tier 3 is for employers not eligible for Tiers 1 or 2.¹¹ As of January 1, 2019, the premium for Tier 1 is 5 percent above voluntary rates, Tier 2 is 20 percent above voluntary rates, and Tier 3¹² is 42 percent above voluntary rates.¹³ Additionally, all three tiers have a flat surcharge of \$475. Tier 3 policies are also subject to assessment

¹ The Florida Workers' Compensation Insurance Plan (FWCIP) was the residual market for Florida until FWCJUA was created on January 1, 1994. Ch. 93-415, Laws of Fla.

² S. 627.311(5), F.S.

³ The Financial Services Commission is the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S.

⁴ FWCJUA differs from an assigned risk plan, which is another type of residual market insurer that "force places" coverage directly with voluntary market insurers based on market share. The FWCJUA is an actual insurer. Deficits can be funded through assessments on Tier 3 policyholders or the workers' compensation insurers in Florida's voluntary market. An assigned risk plan provides a mechanism for insureds to be placed directly with voluntary market insurers, which must accept a pro rata share of the coverage that ends up in the residual market.

⁵ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

⁶ S. 624.3161, F.S.

⁷ The Florida Workers' Compensation Law is chapter 440, F.S.

⁸ S. 627.311, F.S.

⁹ FLORIDA OFFICE OF INSURANCE REGULATION (OIR), *2018 Workers' Compensation Annual Report*, p. 26 (Jan. 15, 2019), <https://www.flair.com/Office/DataReports.aspx#rec> (last visited Feb. 13, 2019).

¹⁰ FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC., *Board of Governors Bulletin 19-5* (Jan. 13, 2019), p. 3, <https://www.fwcjua.com/Home/DisplayDocument?intDocId=5446> (last visited Feb. 13, 2019).

¹¹ For further specifics, see the FWCJUA's website: <http://www.fwcjua.com/> (last visited Feb. 13, 2019).

¹² In addition, an Assigned Risk Adjustment Program surcharge applies for Tier 3.

¹³ FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC., *January 2019 Rate Filing* (Dec. 19, 2018), p. 2, <https://www.fwcjua.com/Home/DisplayDocument?intDocId=5353> (last visited Feb. 13, 2019).

if premiums are not sufficient to cover losses and expenses. Additionally, FWCJUA must request and OIR must issue an order assessing all workers' compensation insurance issued in the voluntary market, if surplus is insufficient to cover any deficit in Tier 1 and Tier 2 policies.¹⁴ FWCJUA has never levied an assessment against its policyholders or voluntary market insurers. The following table shows the distribution of FWCJUA policies and premium, by tier.¹⁵

Tiers	Data for In-Force FWCJUA Policies as of November 30, 2018			
	Policy Count	Percent of Total	Total Estimated Annual Premium	Percent of Total
Tier 1	582	26.6%	\$4,911,842	15.3%
Tier 2	848	38.7%	\$8,717,990	27.2%
Tier 3	762	34.8%	\$18,466,893	57.5%
<i>Total</i>	<i>2,192</i>		<i>\$32,096,725</i>	

When warranted, FWCJUA issues dividends and premium refunds to policyholders seven years after the policy year.¹⁶ Because of the nature of many FWCJUA policyholders, former insureds occasionally cannot be found and the dividend or premium refund goes unclaimed. Currently, FWCJUA reports the unclaimed dividend or premium refund and the former insured's name, last known address, and other information to the Department of Financial Services, Division of Unclaimed Property.¹⁷ The owner can claim her or his property at no cost, any time, regardless of the amount.

Disposition of Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.¹⁸

In 1987, Florida adopted the Uniform Unclaimed Property Act¹⁹ by enacting the Florida Disposition of Unclaimed Property Act.²⁰ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services, Division of Unclaimed Property (DFS) is responsible for receiving property, attempting to locate the rightful owners, and returning the property or

¹⁴ As of September 30, 2018, the FWCJUA held \$91.9 million in surplus. FLORIDA WORKERS' COMPENSATION JOINT UNDERWRITING ASSOCIATION, INC., CRITICAL FILINGS & OPINIONS, *FWCJUA 2018 Third Quarter Statement*, p. 1 (Oct. 25, 2018), <https://www.fwcjua.com/CriticalFiling#> (last visited Feb. 21, 2019). Select year "2018" and "3rd Qtrr Statement 2018."

¹⁵ OIR, *supra* note 8, at 27.

¹⁶ Workers' compensation is a "long-tail" insurance line. This means that it takes many years for total claim costs and losses to develop on a policy. For example, in the first months after an injury, the injured worker may be receiving active medical treatment and temporary indemnity benefits. Temporary indemnity benefits may continue for up to five years. Following maximum medical improvement, the injured worker may continue to receive palliative medical treatment and permanent indemnity benefits for life. The majority of claims close, due to settlement or the statute of limitations, after several years; however, permanent total disability claims may never settle and can remain open for decades.

¹⁷ <https://www.myfloridacfo.com/Division/UnclaimedProperty/> (last visited Feb. 13, 2019). The Division's listing of unclaimed property is available to the public at: <https://www.fltreasurehunt.org/> (last visited Feb. 14, 2019).

¹⁸ Ss. 717.104 – 717.116, F.S.

¹⁹ UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, <https://www.uniformlaws.org/home> (last visited Feb. 14, 2019).

²⁰ Ch. 87-105, Laws of Fla.

proceeds to them. There is no statute of limitations in the Act. Rightful owners may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.²¹ Property held by courts, government or governmental subdivisions or agencies, public corporations, or public authorities that has not been claimed by the owner for more than one year after it became payable or distributable is presumed unclaimed.²²

Holders of unclaimed property (which typically include banks and insurance companies) of \$50 or more are required to use due diligence²³ to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days prior to filing a report with DFS.²⁴ If the owners cannot be located, holders must file an annual report with DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.²⁵ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address of the apparent owners.²⁶ The holder must deliver all reportable unclaimed property to DFS when it submits its annual report.²⁷

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.²⁸ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.²⁹ DFS is required to notify apparent owners in a cost-effective manner.³⁰ For accounts valued at over \$250, at least one active attempt at direct notification must be made.³¹

DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.³²

If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.³³ DFS is required to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund to be utilized for public education.³⁴

²¹ S. 717.102(1), F.S.

²² S. 717.113, F.S. FWCJUA is arguably subject to this provision; however, FWCJUA representatives assert that the FWCJUA reports unclaimed funds consistent with the five-year rule established under s. 717.102, F.S.

²³ "Due diligence" means the use of reasonable and prudent methods under particular circumstances to locate apparent owners of inactive accounts using the taxpayer identification number or social security number, if known, which may include, but are not limited to, using a nationwide database, cross-indexing with other records of the holder, mailing to the last known address unless the last known address is known to be inaccurate, or engaging a licensed agency or company capable of conducting such search and providing updated addresses. S. 717.101(9), F.S.

²⁴ S. 717.117(4), F.S.

²⁵ S. 717.117, F.S.

²⁶ For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. S. 717.117(1)(b), F.S.

²⁷ S. 717.119, F.S.

²⁸ S. 717.1201, F.S. Like many other states' unclaimed property acts, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.

²⁹ Ss. 717.117 and 717.124, F.S.

³⁰ S. 717.118, F.S.

³¹ An "active attempt" is an attempt to contact the property owner directly. "Other means of notification, such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts and items in which the department does not directly attempt to contact the owner are expressly declared to be passive attempts." S. 717.118(1), F.S.

³² S. 717.124, F.S.

³³ S. 717.123, F.S.

³⁴ *Id.*

Claims for recovery of unclaimed property held by DFS under the Act may be filed by or on behalf of any person with an interest in the property.³⁵ While the Act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue their claim by executing a power of attorney agreement. Alternatively, the claimant may sell their right to the property to certain individuals that are registered with DFS for this purpose.³⁶ In either case, the transaction is subject to a fee limitation, unless a disclosure statement³⁷ is provided to the claimant, in the form and with the content specified in the Act. These representatives, known as “locators,” engage in the business of reviewing DFS’ list of apparent owners, finding the apparent owners, and, for a fee, representing the apparent owners to perfect recovery of the unclaimed property.

Unclaimed Dividends and Premium Refunds Owed to Former FWCJUA Insureds

According to DFS, the following accounts and claims have been processed by the Division of Unclaimed Property for funds reported and delivered by FWCJUA.³⁸

Report Year	Total Accounts	Total Value	Claimed Accounts	Value of Claimed Accounts
2013	0	\$0.00	0	\$0.00
2014	17	\$31,654.16	3	\$16,407.37
2015	99	\$228,649.46	29	\$94,442.44
2016	43	\$170,218.34	16	\$96,516.79
2017	415	\$565,353.39	0*	\$0.00*

* Note: For 2017, these newly received accounts were uploaded into the database on January 23, 2019, for claim.

Effect of the Bill

The bill authorizes FWCJUA to retain unclaimed dividends or premium refunds rather than report and deliver the funds to DFS as unclaimed property, subject to the following conditions:

- Within 12 months of the failure of a dividend or premium refund to be disbursed to a former insured, FWCJUA must:
 - Conduct a diligent search³⁹ to locate the former insured;

³⁵ S. 717.124, F.S.

³⁶ Only a Florida licensed attorney, certified public accountant, private investigator or an employee of private investigator, or an employer of the private investigator if the employer holds a Class “A” license under ch. 493, F.S., may execute such purchase agreements. S. 717.1351, F.S. Additionally, the purchaser must be registered with DFS.

³⁷ Ss. 717.135(3) and 717.1351(2), F.S., require the following disclosure statement on the face of the power of attorney or purchase agreement:
FULL DISCLOSURE STATEMENT

The property is currently held by the State of Florida Department of Financial Services, Bureau of Unclaimed Property, pursuant to chapter 717, Florida Statutes. The mailing address of the Bureau of Unclaimed Property is . The Internet address of the Bureau of Unclaimed Property is .

The property was remitted by: .

Date of last contact: .

Property category: .

³⁸ Florida Department of Financial Services, Agency Analysis of 2019 HB 537, p. 1 (Jan. 28, 2019).

³⁹ The bill defines a “diligent search” as “the use of a reasonable and prudent method under particular circumstances to locate former insureds to whom a dividend or premium refund is owed using the taxpayer identification number or social security number, if known, which may include, but are not limited to, using a nationwide database, cross-indexing with other records related to the former insured, mailing to the last known address unless the last known address is known to be inaccurate, or engaging a licensed agency or company capable of conducting such search and providing updated addresses.” This definition is nearly identical to the definition of the “due diligence” currently required of FWCJUA and all account holders on accounts over \$50. S. 717.102(9), F.S.

- Notify the agent on the policy;⁴⁰ and
- For unclaimed dividends or premium refunds of \$250 or more, make one active attempt to directly contact the former insured using the information from the diligent search.⁴¹
- FWCJUA must list all unclaimed dividends and premium discounts on their web page.
- The unclaimed dividends and premium refunds of former FWCJUA insureds may be claimed at any time.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemptions.

Section 2. Providing an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Funds received in the Unclaimed Property Trust Fund and, subsequently, the State School Fund will be reduced by an unknown amount annually. Trust fund principal and interest earnings thereon will be reduced. According to DFS, recent fund receipts were:

Report Year	Total Value Reported
2013	\$0.00
2014	\$31,654.16
2015	\$228,649.46
2016	\$170,218.34
2017	\$565,353.39

2. Expenditures:

Funds paid out from the Unclaimed Property Trust Fund for the disbursement of unclaimed property to former FWCJUA insureds will cease. DFS has disbursed \$207,366.60 for FWCJUA related claims from 2014 to date.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁴⁰ The bill provides that notice to the agent is not notice to the former insured and does not make the agent responsible for the unclaimed dividend or premium refund.

⁴¹ The bill defines an “active notification attempt” as “to notify former insureds by any attempt to directly contact the former insured. Other means of notification, such as publication of the names of former insureds owed dividends or premium refunds in the newspaper, on television, on the Internet, or through other promotional efforts and items, in which the plan does not directly attempt to contact the owner are not active notification attempts.” This definition is nearly identical to the active attempt required of DFS on accounts over \$250. S. 717.118(1), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2019, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The bill, as filed, authorizes the FWCJUA to retain unclaimed dividends and premium refunds without conditions on the FSWCJUA's administration of the unclaimed funds. The committee substitute continues to allow the retention of unclaimed dividends and refunds. It differs from the bill by establishing conditions that the FWCJUA must follow when attempting to distribute unclaimed dividends and premium refunds to the rightful owner (i.e., the former insured). It also provides an unlimited claiming period and establishes definitions of key terms.

The staff analysis has been updated to reflect the committee substitute.