

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 Finance and Tax

BILL: CS/SB 264

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Florida Workers' Compensation Joint Underwriting Association

DATE: April 8, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------------|-----------------------|-----------|------------------|
| 1. | <u>Johnson/Knudson</u> | <u>Knudson</u> | <u>BI</u> | Fav/CS |
| 2. | <u>Babin</u> | <u>Diez-Arguelles</u> | <u>FT</u> | Favorable |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 264 exempts the Florida Workers' Compensation Joint Underwriting Association (JUA) from reporting and remitting to the Department of Financial Services (DFS) any dividend or premium refunds not paid to a former insured because the insured cannot be located.

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 the 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 bill takes effect July 1, 2019.

The Revenue Estimating Conference determined that the bill will reduce State School Trust Fund receipts by \$300,000 in Fiscal Year 2019-2020, with a \$100,000 recurring reduction.

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 the 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.⁸
- 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 property does not have any obligation to report, to pay, or to deliver such property to the DFS.⁹
- 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

¹ See s. 717.102, F.S. *et. seq.*

² See Department of Financial Services, FLTreasureHunt.Gov General Questions, *available at*: <https://www.fltreasurehunt.gov/UP-Web/sitePages/FAQs.jsp> (last visited Mar. 27, 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.

⁷The DFS Unclaimed property website, *available at*: <https://www.fltreasurehunt.gov/> (last visited Mar. 27, 2019).

⁸ Section 717.117(7)(a), F.S.

⁹ Section 717.117(7)(b), F.S.

contract, if the credit balances, overpayments, refunds, or outstanding checks become due and owing pursuant to the managed care contract.^{10,11}

Current law places an obligation on the state, the 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.¹² 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.¹³ 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).¹⁴

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 DFS 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.¹⁵

Florida Workers' Compensation Joint Underwriting Association

The Legislature created the Workers' Compensation Joint Underwriting Association¹⁶ (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. The board of the JUA is composed of a nine-member board of governors appointed by the Financial Services Commission.¹⁷

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

¹⁰ Section 717.117(7)(c), F.S.

¹¹ 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.

¹² Section 717.118(1), F.S.

¹³ Section 717.102, F.S.

¹⁴ 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.

¹⁵ See Section V., Fiscal Impact Statement C. Public Sector Impact in this analysis.

¹⁶ The JUA was created in 1993 and was the successor of the Florida Workers' Insurance Plan. Ch. 93-415, Laws of Fla.

¹⁷ Section 627.311(5)(b), F.S.

experience that do not qualify them for Tier One or Tier Two.¹⁸ 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.¹⁹

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.²⁰ 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 one 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) ²¹ |
| 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 insured because the former insured cannot be reasonably located would be retained by the WCJUA for future use.

¹⁸ Section 627.311(5)(c)22., F.S.

¹⁹ 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). *available at*: <https://www.fwcjua.com/Home/DisplayDocument?intDocId=5353> (last visited Mar.27, 2019).

²⁰ See s. 35, Ch. 2003-412, L.O.F.

²¹ 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, *available at*: <http://www.fwcjua.com/Home/DisplayDocument?intDocId=5060> (last visited Apr. 4, 2019).

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 identified.

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 Revenue Estimating Conference has determined that the bill will reduce State School Trust Fund receipts by \$300,000 in Fiscal Year 2019-2020, with a \$100,000 recurring reduction.

VI. Technical Deficiencies:

None.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
