

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: SB 252

INTRODUCER: Senator Smith

SUBJECT: Insurance Countersignature Requirements

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 252 provides that the absence of a countersignature does not affect the validity of a property, casualty, or surety insurance policy or contract. This could reduce the risk that an insured loses coverage due to events the insured cannot control. Current law provides that no property, casualty, or surety insurer shall assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent.

This bill also provides that the change in the countersignature requirement is intended to clarify existing law and applies retroactively.

II. Present Situation:

Section 624.425(1), F.S., requires all property, casualty, and surety insurance policies or contracts to be issued and countersigned by an agent. The agent must be regularly commissioned, currently licensed, and appointed as an agent for the insurer.¹ The purpose of the countersignature requirement is “to protect the public ... by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.”² The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.³ If the countersignature requirement is not waived, a policy is not enforceable against the insurer, as a court will not consider the policy properly executed.⁴ In the absence of a countersignature, whether a policy is waived is a factual

¹ An earlier version of s. 624.425, F.S., required a countersignature by licensed agent who was a Florida resident. The residency requirement was held invalid in *Council of Insurance Agents and Brokers v. Gallagher*, 287 F.Supp.2d 1302 (N.D. Fla. 2003).

² *Wolfe v. Aetna Insurance Company*, 436 So.2d 997, 999 (Fla. 5th DCA 1983)

³ See *Meltsner v. Aetna Casualty and Surety Company of Hartford, Conn.*, 233 So.2d 849, 850 (Fla. 3rd DCA 1969)(holding under the facts of that case that the countersignature requirement was waived).

⁴ 43 AM. JUR. 2d Insurance s. 225.

matter determined on a case-by-case basis.⁵ In at least one recent case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.⁶

Section 624.426, F.S., excludes some policies from the countersignature requirement. These are:

- Contracts of reinsurance;
- Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business;
- United States Custom surety bonds issued by a corporate surety approved by the United States Department of Treasury;
- Policies of insurance issued by insurers whose agents represent one company or a group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and
- Policies of property, casualty, and surety insurance issued by insurers whose agents represent one company or a group of companies under common ownership and for which the application is lawfully submitted to the insurer.⁷

III. Effect of Proposed Changes:

This bill provides that the absence of a countersignature does not affect the validity of a policy or contract of insurance. This bill does not repeal the countersignature requirement; it provides that the failure to obtain a countersignature does not invalidate the policy or contract. This bill also provides that the provision is remedial and intended to clarify existing law. This bill applies retroactively to the enactment of s. 627.425, F.S., on October 1, 1959.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ See *Meltsner*, 233 So. 2d at 850 (finding a waiver of the countersignature requirement); *Wolfe*, 436 So.2d at 999 (finding a waiver of the countersignature requirement); *CNA Intern. Reinsurance Co. Ltd. v. Phoenix*, 678 So.2d 378 (Fla. 1st DCA 1996)(noting that the countersignature requirement may be waived).

⁶ See *FCCI Insurance Company v. Gulfwind Companies, LLC*, 2013 CC 003056 NC (Fla. Sarasota County Court).

⁷ See s. 624.426, F.S.

D. Other Constitutional Issues:

This bill provides that it is remedial in nature, is intended to clarify existing law, and applies retroactively to the enactment of s. 624.425, F.S. Retroactive application of a statute is generally unconstitutional if the statute impairs vested rights, creates new obligations, or imposes new penalties.⁸

To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.⁹

The second prong looks to see if a vested right is impaired. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.¹⁰ This bill contains a finding that it is remedial. "Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes."¹¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ See *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55 (Fla. 1995).

⁹ See *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494 (Fla. 1999).

¹⁰ See *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So.2d 1210, 1218 (Fla. 2d DCA 2004).

¹¹ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

VIII. Statutes Affected:

This bill substantially amends section 624.425 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 626.025, 626.752, and 628.909.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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