

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 252

INTRODUCER: Banking and Insurance Committee and Senator Smith

SUBJECT: Insurance Countersignature Requirements

DATE: March 30, 2015

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/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 eliminates the requirement that each surplus lines agent, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar year has been submitted to the FSLSO. The requirement is no longer needed because the FSLSO has implemented auditing procedures to confirm the information.

**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.<sup>1</sup> The purpose of the countersignature requirement is “to protect the public ... by requiring such policies to be issued

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<sup>1</sup> An earlier version of s. 624.425, F.S., required a countersignature by a 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).

by resident, licensed agents over whom the state can exercise control and thus prevent abuses.”<sup>2</sup> The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.<sup>3</sup> 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.<sup>4</sup> In the absence of a countersignature, whether a policy is waived is a factual matter determined on a case-by-case basis.<sup>5</sup> In at least one recent case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.<sup>6</sup>

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.<sup>7</sup>

### **Surplus Lines Agent Affidavit**

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.<sup>8</sup> Section 626.916, F.S., requires the insurance agent to make a diligent effort<sup>9</sup> to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market. Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days after the effective date of the transaction.<sup>10</sup> They must also transmit service fees to the Office each month and must transmit assessment and tax payments to the Office quarterly.<sup>11</sup> Current law also requires a

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

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

<sup>4</sup> 43 AM.JUR.2D *Insurance* s. 225.

<sup>5</sup> *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).

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

<sup>7</sup> *See* s. 624.426, F.S.

<sup>8</sup> *See* s. 626.915(3), F.S.

<sup>9</sup> Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

<sup>10</sup> *See* s. 626.921, F.S. (requiring reports of transactions as required by the FSLSO Plan of Operation); Florida Surplus Lines Office, *Agent's Procedures Manual*, (Jan. 2015) <http://www.fslso.com/publications/manuals/Agents.Procedures.Manual.pdf> (requiring reports within 30 days).

<sup>11</sup> *See* ss. 626.932, 626.9325, F.S.

surplus lines agent to file a quarterly affidavit with the FLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FLSO.<sup>12</sup> The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.<sup>13</sup> The FLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.<sup>14</sup>

### **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 repeals s. 626.931(1) and s. 626.931(2), F.S., requiring a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort. The FLSO reports that the provisions are no longer necessary. The FLSO receives the information relating to the surplus lines transactions from the agents and the insurers and has implemented audit procedures to verify the information. The diligent effort affidavit is required under s. 626.916(1), F.S.

This bill makes conforming changes to ss. 626.932, 626.935, and 626.936, F.S.

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.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>12</sup> See s. 626.931(1), F.S.

<sup>13</sup> See s. 626.932(2), F.S.

<sup>14</sup> E-mail from the FLSO (on file with the Committee on Banking and Insurance).

**B. Private Sector Impact:**

The bill may reduce costs to surplus lines agents by eliminating the requirement to file a quarterly report.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 624.425, 626.916, 626.931, 626.932, 626.935, and 626.936.

**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 on March 4, 2015:**

The committee substitute removes a provision of the bill providing that the bill was retroactive until 1959. It also repeals s. 626.931(1) and s. 626.931(2), F.S., requiring a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort.

**B. Amendments:**

None.