

**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 Rules

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BILL: CS/CS/CS/SB 252

INTRODUCER: Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Smith

SUBJECT: Insurance

DATE: April 10, 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>Fav/CS</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/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.

The bill amends the definition of financial guaranty insurance to provide that financial guaranty insurance does not include guarantees of higher education loans unless they are written by a financial guaranty insurance corporation.

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.

The bill allows a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination that is up to 5 years old as of the date of the insurer's application.

The bill changes the due date for certain reports to the President of the Senate and Speaker of the House of Representatives from January 1 to January 15.

## 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 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>

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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).

<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.

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 surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO.<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 FSLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.<sup>14</sup>

### **Reports and Recommendations to the Legislature**

Section 408.909(9), F.S., requires the Office of Insurance Regulation and the Agency for Health Care Administration to submit a report on health flex plans to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1 of each year. A health flex plan is a plan that covers basic and preventative health care services for low-income uninsured state residents.<sup>15</sup> There are currently three health flex plans covering approximately 10,931 enrollees.<sup>16</sup>

Section 440.13(12), F.S., creates a three-member panel to determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, pain programs, and durable medical equipment for injuries covered by workers' compensation. The three-member panel is required to submit recommendations every 2 years on methods to improve the workers' compensation health care delivery system. The recommendations are submitted to the President of the Senate and the Speaker of the House of Representatives on or before January of odd-numbered years.

Section 627.211, F.S., requires the Office of Insurance Regulation to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must evaluate competition in the workers' compensation insurance market. It must contain an analysis of the availability and affordability of workers' compensation coverage

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<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.

<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 FSLSO (on file with the Committee on Banking and Insurance).

<sup>15</sup> See s. 408.909(1), F.S.

<sup>16</sup> See *Health Flex Plan Program Annual Report January 2015* prepared by the Agency for Health Care Administration and the Office of Insurance Regulation at <http://www.flsenate.gov/Session/Bill/2013/1128/Analyses/2013s1128.ca.PDF> (last accessed April 10, 2015).

and whether the current market structure, conduct, and performance are conducive to competition.

### **Foreign or Alien Insurer Application for Certificate**

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.<sup>17</sup> A domestic insurer is defined as being formed under the laws of Florida.<sup>18</sup> An alien insurer is defined as an insurer other than a foreign or domestic insurer.<sup>19</sup> When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 3-year period preceding the date of application.<sup>20</sup> In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.<sup>21</sup>

### **III. Effect of Proposed Changes:**

#### **Countersignatures**

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.

#### **Surplus Lines**

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.

Existing law requires that before issuing surplus lines coverage, a surplus lines agent must verify that a diligent effort has been made by the producing agent to obtain coverage. As part of the verification process, the surplus lines agent must obtain a properly documented statement of diligent effort from the producing agent. Before the surplus lines agent may rely on the statement of diligent effort, the surplus lines agent must find the producing agent's efforts to be reasonable. Under existing s. 926.916(1)(a), F.S., reasonableness will "be assessed by taking into account factors which include, but are not limited to, a regularly conducted program of verification of the information provided by the retail or producing agent." This bill removes the statutory definition of reasonableness. Reasonableness will now be determined on a case by case basis.

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<sup>17</sup> See s. 624.06(2), F.S.

<sup>18</sup> See s. 624.06(1), F.S.

<sup>19</sup> See s. 624.06(3), F.S.

<sup>20</sup> See s. 624.413(1)(f), F.S.

<sup>21</sup> *Id.*

### **Financial Guaranty Insurance**

Existing s. 627.971(1)(a), F.S., defines financial guaranty insurance. It means a surety bond, insurance policy, an indemnity contract that is issued by an insurer, or any similar guaranty, under which a loss is payable upon proof of the occurrence of financial loss to an insured, obligee, or indemnitee as a result of certain enumerated events. Existing s. 627.971(1)(b), F.S., however, lists 13 categories of what financial guaranty insurance does *not* include. The bill amends that section to provide that financial guaranty insurance does not include guarantees of higher education loans, unless written by a financial guaranty insurance corporation. This language conforms the current definition to the model Financial Guaranty Insurance Guideline of the National Association of Insurance Commissioners.

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

### **Reports to the Legislature**

This bill changes the due date of the report by the Agency for Health Care Administration and the Office of Insurance Regulation on health flex plans from January 1 of each year to January 15 of each year. It changes the due date for recommendations by the workers' compensation three-member panel from January 1 to January 15. The bill changes the due date for the report by the Office of Insurance Regulation on competition in the workers' compensation insurance market from January 1 to January 15.

### **Foreign or Alien Insurer Application for Certificate**

The bill amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

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.

**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: 408.909, 440.13, 624.413, 624.425, 626.916, 626.931, 626.932, 626.935, 626.936, 626.971, and 627.211.

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

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

**CS/CS/CS by Rules Committee on April 9, 2015:**

The committee substitute:

- Changes the due date for certain reports to the President of the Senate and Speaker of the House of Representatives from January 1 to January 15, and;
- Allows a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination that is up to 5 years old as of the date of the insurer's application.

**CS/CS by Judiciary Committee on March 31, 2015:**

The committee substitute:

- Deletes the statutory definition of what constitutes "reasonableness" in a surplus lines agent's reliance on a producing agent's efforts to find coverage before seeking surplus lines coverage;
- Deletes language from the bill about the specifications for a statement of diligent effort form that was to be prescribed by rule by the Department of Financial Services. Accordingly, DFS is not required to develop a form or engage in rulemaking.

- Provides that “financial guaranty insurance” does not include guarantees of higher education loans unless they are written by a financial guaranty insurance corporation.

**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.