

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1472

SPONSOR: Senator Mitchell

SUBJECT: Exemption To Countersignature Law and Defining "Claim" For Property Claim Mediation

DATE: March 11, 1999

REVISED: 3/22/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The bill provides an exception to the insurance countersignature requirement that any policy of insurance delivered in Florida by a nonresident agent must be countersigned by a Florida resident licensed agent. The bill provides the limited exception for exclusive agents, who work for only one insurance company, if a Florida resident agent or customer representative has lawfully signed the application for insurance. This exception from the countersignature law would not apply to independent agents, who may sell policies for various companies.

The bill also defines the term "claim" for purposes of alternative dispute resolution of property claims. The bill excludes from the mediation process cases where there is fraud, no coverage, or in cases of material misrepresentation by the policyholder. These exceptions are currently provided by rule of the Department of Insurance for which the Joint Administrative Procedures Committee has determined that there is not legislative authority.

This bill amends the following sections of the Florida Statutes: 624.425 and 627.7015.

## II. Present Situation:

### Countersignature Requirement

Pursuant to ss. 624.425 and 626.741, F.S., all insurance policies written under a nonresident agent's license must be countersigned by a Florida resident agent. Section 624.425, F.S., states that a resident agent may not sign or countersign any policy to be issued outside his or her office in blank. However, a resident agent may give a written power of attorney to the issuing insurance company to countersign such documents by imprinting his or her name in lieu of manually countersigning the documents. An agent may not give a power of attorney to any other person to countersign in his or her name unless the person is directly employed by the agent in the office of the agent.

Section 624.426, F.S., provides for certain exceptions to the resident agent countersignature law. A countersignature is not required for contracts of reinsurance, policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business, or U.S. Customs surety bonds issued by a corporate surety, approved by the U.S. Department of Treasury with the United States as beneficiary.

The present law serves to protect consumers by assuring that the agent in Florida, knowledgeable about Florida law, is subject to the legal responsibilities associated with being an agent for the policy. It also serves to protect the economic interests of Florida resident agents by at least indirectly assuring them part of the commission on the policy. In some cases, it acts as an administrative hindrance to multi-state insurers who require their Florida agents to submit policy applications to a regional office outside the state, which must be then sent back to the Florida agent for a countersignature prior to issuance of the policy. Although the insurer could legally obtain a power of attorney from the agent to meet the countersignature requirement, doing so may be unacceptable to the internal policies and procedures of the insurer and/or the agent. For example, insurers and agents may not want a power of attorney to be construed as making the agent an “employee” of the insurance company.

#### **Alternative Dispute Resolution For Property Claims**

Section 627.7015, F.S., provides an alternative procedure for the resolution of disputed property claims. This section was enacted during the Special Legislative Session in November 1993, in response to claims arising from Hurricane Andrew, and allowed property claims to be mediated, in certain cases, rather than going through the “potentially expensive and time-consuming adversarial appraisal process prior to litigation.” 627.7015(1). The Department of Insurance promulgated rules establishing the property insurance claims mediation program.

Under DOI Rule 4-166.031, enacted in 1996, guidelines were set up for resolution of property claims through mediation. The definition of “claim” was revised from the 1993 rule, Rule 4-166.030, to exempt situations where the insurer has a reasonable basis to suspect fraud, or where, based upon agreed facts as to the cause of loss, there is clearly no coverage for the claim. Unless the parties agree to mediate a claim involving a lesser amount, a “claim” involves a request for \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more, notwithstanding any applicable deductible. Also, in order to qualify as a “claim”, a policy must have been in effect at the time of the loss. Disputes from property mediation may be rejected if the dispute does not meet the definition of “claim.”

The Joint Administrative Procedures Committee (JAPC) has determined that the department may exclude cases from mediation which involved suspected fraud or cases where there was no coverage, as this Rule 4-166.031 was in effect prior to the changes in the Administrative Procedures Act (APA) in 1996. Generally, under the previous APA, an agency had greater discretion to promulgate rules to use in implementing the statutes.

Currently, the APA only allows rules to be promulgated where there is direct statutory authority. When the department filed proposed amendments to the rule to exclude cases involving material misrepresentation from mediation, JAPC determined that under the new APA act, the department had no statutory authority to do so. In October 1998, JAPC suggested that the department seek a

clear legislative directive in the form of a statutory amendment in order to give the department the authority to create definitions to exempt certain matters from mediation.

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

#### **Countersignature Law**

**Section 1.** Amends s. 624.426, F.S., to exclude from the countersignature law, policies of insurance issued by insurers whose use agents licensed only with that company and who do not represent any other company. The exemption is provided only for captive agents and applications for coverage must be lawfully signed by an appointed agent or customer representative licensed in Florida.

This bill would except exclusive agents, or those who sell policies for only one company, as opposed to independent agents, from the countersignature law requirements. Consumers will not be financially impacted by this bill, other than a possible decrease in administrative costs.

The bill would not affect Florida independent insurance agents or their right to receive commissions for serving as a countersigning agent.

#### **Alternative Dispute Resolution of Property Insurance Claims**

**Section 2.** The bill defines the term “claim” for purposes of the mediation program set forth in s. 627.7015, F.S., and excludes cases involving suspected fraud, where there is no coverage under the policy under agreed upon facts, or material misrepresentation by the insured, from mediation for property claims disputes. As with current claims, the department will continue to determine which claims are eligible for the mediation program.

**Section 3.** The act will take effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. Other Constitutional Issues:**

By limiting the exception to exclusive agents only, a question of equal protection may be raised. To be constitutional, there must be a rational basis for making a distinction between the independent and exclusive agent for purposes of the countersignature law. It can be

argued that the independent agents deal with multiple insurance companies, and therefore, a greater need exists for the policy to come through his or her office, so the countersigning agent can keep track of which policy is with which company.

## **V. Economic Impact and Fiscal Note:**

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

Under s. 627.7015, F.S., the insurer is currently required to pay \$25 to the department to go to mediation. Excluding certain cases from mediation, may reduce fees generated from mediation.

### **B. Private Sector Impact:**

Section 624.426, F.S., as amended, will create a reduction in the administrative costs of exclusive agents, as well as a decrease in the delay in getting the policy to the insured. The bill allows a more efficient business practice for insurance companies with a captive agent force.

Florida independent insurance agents will not be affected and will still be entitled to a commission on any Florida policy on which they serve as the countersignature agent.

Section 627.7015, F.S., requires the insurer to bear the costs of mediation. The fee paid by the insurer is \$250, with \$25 going to the department and \$225 going to the mediator. Proponents of the bill believe the exclusions will remove inappropriate claims from the mediation programs and ultimately save policyholders money.

It is more cost and time efficient to exclude certain cases from mediation that are unlikely to be resolved, such as those excluded by the bill, where the insurance company believes it is the victim of fraud or misrepresentation, or where there is no coverage after reviewing the agreed upon facts.

### **C. Government Sector Impact:**

Section 627.7015, F.S., will cause a decrease in mediation revenues to the department, but the bill does not have a measurable fiscal impact.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

**Section 1.** Information provided by the Independent Insurance Agents of America indicates that only 12 states, including Florida, impose additional requirements on non-resident licensees, such as the countersignature law.

**Section 2.** The bill codifies only section (b)(1) of department rule 4-166.031, excluding claims from mediation where there is fraud or no coverage. The bill does not address sections (b)(2) and (3) of Rule 4-166.031 in defining a “claim.” These subsections refer to the jurisdictional amount required for mediation and that a policy must have been in effect at the time of the loss in order to qualify as a “claim.” See Present Situation.

**VIII. Amendments:**

#1 by Banking and Insurance Committee:

Amends s. 627.7015, F.S. For purposes of mediation of property insurance claims, the amendment revises the definition of “claim” to include only those disputes where the amount in controversy is greater than \$500, unless the parties agree to mediate a dispute involving a lesser amount. This amendment codifies a provision in department rule 4-166.031, which is not contained in the bill.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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