

**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: SB 870

INTRODUCER: Senator Smith

SUBJECT: Insurance

DATE: March 24, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 870 provides that the absence of a countersignature by an agent of the insurer does not affect the validity of a property, casualty, or surety insurance policy or contract. This change may reduce the risk that an insured loses coverage due to events the insured cannot control.

Current law provides that property, casualty, and surety insurers do not assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent for the insurer. However, the countersignature requirement may be waived by the insurer. Whether the requirement has been waived is a factual question.

**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.

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>1</sup>

The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.<sup>2</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>3</sup> In the absence of a countersignature, whether a policy is waived is a factual

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<sup>1</sup> *Wolfe v. Aetna Insurance Company*, 436 So. 2d 997, 999 (Fla. 5th DCA 1983).

<sup>2</sup> *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).

<sup>3</sup> 43 Am. Jur. 2d Insurance s. 225.

matter determined on a case-by-case basis.<sup>4</sup> In at least one case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.<sup>5</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>6</sup>

### III. Effect of Proposed Changes:

SB 870 provides that the absence of a countersignature does not affect the validity of the insurance policy or contract.

The bill will preclude arguments by an insurer that a policy is invalid because it lacks a countersignature.

The bill takes effect July 1, 2014.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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<sup>4</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).

<sup>5</sup> See *FCCI Insurance Company v. Gulfwind Companies, LLC*, 2003 CC 003056 NC (Fla. Sarasota County Court).

<sup>6</sup> Section 624.426, F.S.

**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.

**VIII. Statutes Affected:**

This bill substantially amends section 624.425 of the Florida Statutes.

**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.