

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 233	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Regulatory Affairs Committee; Insurance & Banking Subcommittee; Santiago	114 Y's	0 N's
COMPANION BILLS:	CS/CS/CS/SB 252	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 233 passed the House on April 24, 2015, as CS/CS/CS/SB 252.

Under current law, subject to a few exceptions, insurance companies are not to assume direct liability for any property, casualty, or surety insurance policy unless it contains a countersignature by a Florida-licensed agent. Nonetheless, the countersignature requirement can be waived by insurance companies when they accept payment under the policy. Thus, insurance companies can be bound by a contract of insurance in the absence of a countersignature. However, it is currently unclear whether policyholders can similarly be bound by a contract of insurance in the absence of a countersignature.

The bill provides that the absence of a countersignature does not affect the validity of the insurance policy. The bill clarifies that an omission by a third party to the contract (the Florida-licensed agent) does not impact the validity of the contract of insurance between the insurance company and the policyholder.

The bill also changes the due dates for certain reports and recommendations to the Legislature:

- Currently, the Office of Insurance Regulation (OIR) and the Agency for Health Care Administration (AHCA) are required to submit a report on health flex plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives each year by January 1. The bill changes the due date for this report to January 15 of each year.
- Currently, a certain three-member panel is required to submit recommendations to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system by January 1 of odd-numbered years. The bill changes the due date for the recommendations to January 15 of odd-numbered years.
- Currently, OIR is required to submit a report which evaluates competition in the workers' compensation insurance market in Florida to the President of the Senate and the Speaker of the House of Representatives each year by January 1. The bill changes the due date for this report to January 15 of each year.

The bill also extends the period of time that a report of the most recent examination of a foreign or alien insurer remains valid and may be considered for purposes of applying for a certificate of authority from three years to five years.

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

The bill has no fiscal impact on the public sector and may have an indeterminate impact on the private sector.

The bill was approved by the Governor on May 21, 2015, ch. 2015-42, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0233z1.IBS

DATE: June 10, 2015

A. EFFECT OF CHANGES:

Countersignatures

Background on Countersignatures

A countersignature is a “signature attesting to the authenticity of a document already signed.”¹ Subject to a few exceptions,² Florida law requires a countersignature by a Florida-licensed agent for any property, casualty, or surety insurance policy.³

In 2004, following a constitutional ruling on s. 624.425, F.S., the Florida Legislature removed a requirement in the statute that the countersigning agent be a Florida resident. Prior to this change, s. 624.425, F.S., required a countersignature by a Florida-licensed agent who was also a Florida resident. This distinction based solely on residency was overturned on constitutional grounds in *Council of Insurance Agents and Brokers v. Gallagher*.⁴ In that decision, the United States District Court for the Northern District of Florida declared that s. 624.425, F.S., “violate[d] the Privileges and Immunities Clause and Equal Protection Clause of the United States Constitution to the extent that [it denied] to Florida-licensed nonresident insurance agents the same rights and privileges [afforded] to Florida-licensed resident agents.”⁵

Following the *Gallagher* decision, the legislature amended s. 624.425, F.S., in 2004, removing the language that required the countersigning agent to be a Florida resident, but maintaining the requirement that the policy be countersigned by a Florida-licensed agent.⁶ This amendment marked the most recent change to s. 624.425, F.S.

The original purpose of the countersignature requirement was to “assure the presence of local agents to serve the needs of policyholders who had previously encountered difficulties in dealing with insurance companies headquartered out of state.”⁷ However, since the countersigning agent is no longer required to be a Florida resident, it is less clear whether this purpose is being served today.⁸

The Department of Financial Services (DFS) is responsible for licensing and regulating insurance agents.⁹ The agent’s countersignature on the policy provides DFS with a responsible party to contact

¹ See Countersign, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003), available at <http://www.merriam-webster.com>.

² Excepted from the countersignature requirement are: contracts of reinsurance; policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business; United States Customs surety bonds that are issued by a corporate surety approved by the United States Department of Treasury and that name the United States as the beneficiary; policies of insurance issued by insurers whose agents represent only one company or 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 insurance issued by insurers whose agents represent, as to property, casualty, and surety insurance, only one company or group of companies under common ownership and for which the application has been lawfully submitted to the insurer. s. 624.426, F.S.

³ s. 624.425, F.S.

⁴ 287 F. Supp. 2d 1302, 1304 (N.D. Fla. 2003).

⁵ *Id.* at 1313.

⁶ See SB 2588 (2004).

⁷ *Colonial Penn Communications, Inc. v. Crosley*, 443 So. 2d 1030, 1032 (Fla. 5th DCA 1983); see also *Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 999 (Fla. 5th DCA 1983) (noting purpose of countersignature requirement was to “protect the public in purchasing insurance policies by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.”).

⁸ Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).

⁹ s. 626.013, F.S.

in the event of non-compliance or any other issues that may arise.¹⁰ The countersignatures also establish that someone familiar with Florida insurance law has attested to the specific policy's validity.¹¹

The Office of Insurance Regulation (OIR) is responsible for licensing and regulating insurance companies.¹² As often as it deems necessary, OIR conducts Market Conduct Examinations where it determines whether insurance companies are complying with Florida law.¹³ One factor surveyed in these Market Conduct Examinations is whether insurance companies are complying with the countersignature requirement.¹⁴

Current Situation on Countersignatures

Currently, Florida law provides that insurers are not to assume direct liability unless the insurance policy contains a proper countersignature.¹⁵ The relevant portion of the statute reads as follows:

Except as stated in 624.426, no authorized property, casualty, or surety insurer shall assume direct liability as to a subject of insurance resident, located, or to be performed in this state unless the policy or contract of insurance is issued by or through, and is countersigned by, an agent who is regularly commissioned and licensed currently as an agent and appointed as an agent for the insurer under this code.¹⁶

Though the policy is statutorily required to be countersigned by a Florida-licensed agent, the countersignature requirement can be waived.¹⁷ Currently, if an insurer collects payment on a policy that lacks a countersignature, the insurer has waived the countersignature requirement and cannot then raise as a defense to a claim the invalidity of the policy due to the absence of a countersignature.¹⁸ Thus, an insurer can presently be bound by a contract of insurance in the absence of a countersignature. However, it is currently unclear whether policyholders can be similarly bound by contracts of insurance in the absence of a countersignature.

Effect of the Bill on Countersignatures

This bill affects property, casualty, and surety insurance policies that have not been countersigned, providing that the absence of a countersignature does not affect the validity of the policy or contract of insurance.

The bill gives insurance companies the same rights as policyholders to enforce an otherwise valid policy in the event the policy or contract lacks a countersignature. The contract of insurance is between the insurance company and the policyholder. Thus, the effect of this bill is such that the omission of a

¹⁰ Information obtained through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

¹¹ Information obtained through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

¹² s. 20.121(3)(a)1., F.S.

¹³ s. 624.3161, F.S.

¹⁴ Rule 69O-142.011(11)(a)11., F.A.C.

¹⁵ s. 624.425(1), F.S.

¹⁶ *Id.*

¹⁷ *See Wolfe v. Aetna Ins. Co.*, 463 So. 2d 997, 1000 (Fla. 5th DCA 1983) (holding that the absence of a countersignature on a policy of insurance “does not, as a matter of law, invalidate it, because the absence of a countersignature may be waived [by the insurer], and does not, in and of itself, control the effectiveness of the insurance.”); *Meltsner v. Aetna Cas. & Sur. Ins. Co. of Hartford, Conn.*, 233 So. 2d 849, 850 (Fla. 3d DCA 1969) (noting that there can be a “waiver of the requirement that the insurance policy be countersigned by a local producing agent”); *see also* 30B Fla. Jur. 2d Insurance s. 1546 (2014).

¹⁸ Information confirmed through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).

countersignature by a licensed agent – a third party to the insurance contract – would not impact the validity of the insurance policy between the insurer and the policyholder.¹⁹

Under this bill, insurance companies would still be required to obtain countersignatures, despite the fact that the absence of a countersignature would not invalidate the policy.²⁰ Those insurance companies that do not obtain countersignatures on their policies will still be subject to review and possible penalties from OIR through Market Conduct Examinations.²¹ Such penalties range from reprimands to fines to the suspension or revocation of an insurance license.²²

The bill also does not relieve the agent of their obligation to countersign insurance policies.²³ Though DFS has the statutory authority to sanction agents,²⁴ it typically does not fine agents for failing to countersign policies.²⁵ DFS believes that agents have enough incentive to comply with the countersignature law through the possibility of commissions or additional face time with consumers.²⁶

Reports and Recommendations to the Legislature

Background on Reports and Recommendations to the Legislature

A health flex plan provides coverage for basic and preventative health care services for low-income uninsured Florida residents.²⁷ Currently, OIR and the Agency for Health Care Administration (AHCA) are required to submit a report on health flex plans to the Governor, the President of the Senate, and the Speaker of the House of Representatives each year by January 1.

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 panel is required to submit recommendations every two years to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers’ compensation health care delivery system. Currently, the panel is required to submit the recommendations by January 1 of odd-numbered years.

OIR is required to submit a report which evaluates competition in the workers’ compensation insurance market in Florida to the President of the Senate and the Speaker of the House of Representatives.²⁸ The purpose of the report is “to aid the Legislature in determining whether changes to the workers’ compensation rating laws are warranted.”²⁹ Currently, OIR is required to submit this report each year by January 1.

Effect of the Bill on Reports and Recommendations to the Legislature

¹⁹ Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee).

²⁰ Information obtained through telephone conversation with FCCI Insurance Group, 1/28/2015 (notes on file with Insurance & Banking Subcommittee); Information confirmed through e-mail communication with OIR, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

²¹ Rule 69O-142.011(11)(a)11., F.A.C.; Information confirmed through e-mail communication with OIR, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

²² Rule 69O-142.011, F.A.C.

²³ Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

²⁴ s. 624.307, F.S.

²⁵ Information confirmed through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

²⁶ Information obtained through e-mail communication with DFS, 1/29/2015 (e-mail on file with Insurance & Banking Subcommittee).

²⁷ s. 408.909, F.S.

²⁸ s. 627.211(6), F.S.

²⁹ *Id.*

The bill changes the due date for the report submitted by OIR and AHCA on health flex plans from January 1 to January 15. The report is still required to be submitted every year.

The bill changes the due date for the recommendations on methods to improve the workers' compensation health care delivery system from January 1 to January 15. The recommendations are still required to be submitted every two years on odd-numbered years.

The bill changes the due date for the report submitted by OIR evaluating competition in the Florida workers' compensation insurance market from January 1 to January 15. The report is still required to be submitted every year.

Foreign or Alien Insurer Application for Certificate of Authority

Background on Foreign or Alien Insurer Application for Certificate of Authority

No person can act as an insurer in Florida unless OIR issues the insurer a certificate of authority.³⁰ A foreign insurer is defined as an insurer "formed under the laws of any state, district, territory, or commonwealth of the United States other than this state."³¹ An alien insurer is defined as "an insurer other than a domestic or foreign insurer."³²

If a foreign or alien insurer applies for a certificate of authority, it must submit to OIR a copy of the report of the most recent examination of the insurer certified by the public official having supervision of insurance in its state of domicile or of entry into the United States.³³ Currently, the report remains valid and may be considered in the application for certificate of authority for three years.³⁴ In lieu of the certified examination report, OIR may 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 public official having supervision of insurance in its state of domicile or of entry into the United States.³⁵

Effect of the Bill on Foreign or Alien Insurer Application for Certificate of Authority

The bill changes the period of time which a report remains valid and may be considered for purposes of a foreign or alien insurer applying for certificate of authority from three years to five years.

Financial Guaranty Insurance

Background on Financial Guaranty Insurance

Financial guaranty insurance means "a surety bond, insurance policy, an indemnity contract issued by an insurer, or any similar guaranty, under which loss is payable upon proof of occurrence of financial loss to an insured, claimant, obligee, or indemnitee as a result of" certain enumerated events.³⁶ However, s. 627.971(1)(b), F.S., currently lists thirteen categories of what financial guaranty insurance does *not* include.

Effect of the Bill on Financial Guaranty Insurance

The bill amends the definition of financial guaranty insurance, providing that financial guaranty insurance does not include guarantees of higher education loans, unless written by a financial guaranty

³⁰ s. 624.401(1), F.S.

³¹ s. 624.06(2), F.S.

³² s. 624.06(3), F.S.

³³ s. 624.413(f), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ s. 627.971(1)(a), F.S.

insurance corporation. This change conforms to the National Association of Insurance Commissioners (NAIC) Financial Guaranty Insurance Model Guideline.³⁷

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. To the extent that there may be less of an incentive for an insurance company to seek a countersignature, some Florida-licensed agents may no longer receive the economic or social benefit of being a counter-signatory. However, even though the lack of a countersignature would not affect the validity of the policy, insurers would still have to seek countersignatures in order to comply with the letter of the law.

D. FISCAL COMMENTS:

None.

³⁷ Financial Guaranty Insurance Guideline, NAIC GDL-1626, *available at* http://www.naic.org/prod_serv_model_laws.htm.