

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.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 870

INTRODUCER: Senator Smith

SUBJECT: Insurance

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____

I. Summary:

SB 870 provides that the absence of a countersignature does not affect the validity of an 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 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.” However, the countersignature requirement may be waived by the insurer. Whether the requirement has been waived is a factual question.

This bill takes effect July 1, 2014.

II. Present Situation:

Section 624.425(1), F.S., requires that a property, casualty, or surety insurance policy or contract be issued and countersigned by an agent who is licensed as an agent 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.”¹ The absence of a countersignature does not necessarily make the insurance policy invalid. The absence of a countersignature may be waived.² If the countersignature requirement is not waived, a policy may not be enforceable against the insurer.³ In the absence of a countersignature, whether a policy is valid is a factual matter determined on a

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

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

³ *See generally* 43 Am. Jur. 2d Insurance s. 225.

case-by-case basis.⁴ There has been at least one case where a defendant has argued the lack of countersignature as a defense in breach of contract action.⁵

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. This could reduce the risk that an insured loses coverage due to events the insured cannot control.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴ 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).

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

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
