

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1094
SPONSOR: Banking and Insurance Committee and Senator Campbell
SUBJECT: Motor Vehicle Insurance Costs (Biometric technology-applied to PIP benefits)
DATE: January 21, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1094 provides that a bill for services from a health care provider to an insurer for motor vehicle personal injury protection (PIP) benefits creates a legal presumption that the insured was present in the provider’s office for the time the billed services were rendered if the provider uses biometric time date technology that verified that fact. The presumption may be rebutted by credible counter-evidence establishing the nonexistence of the presumed fact.

The bill also provides that a health care provider may use biometric time date technology in lieu of the insured signing the “patient log” when that insured receives treatment or services. Biometrics are automated methods of recognizing a person based on certain physiological or behavioral characteristics. Examples include facial recognition; fingerprint scans; hand or finger geometry; iris, retinal and vein scans; signature verification; and voice recognition.

This bill substantially amends sections 627.732 and 627.736 of the Florida Statutes.

II. Present Situation:

Biometric Technology

Biometrics is defined as the statistical study of biological data. This technology is utilized as an automated method of recognizing a person based on physiological or behavioral characteristics. Common physical biometrics include fingerprints; hand or palm geometry; and iris, retinal, or facial characteristics. Behavioral characteristics include signature, voice, keystroke pattern, and

gait.¹ The terms "biometrics" and "biometry" have been used since early in the 20th century to refer to the field of development of statistical and mathematical methods applicable to data analysis problems in the biological sciences. Recently, the term "biometrics" has also been used to refer to the emerging field of technology devoted to identification of individuals using biological traits.

Biometric-based technologies provide for confidential financial transactions and personal data privacy. This technology is used in federal, state and local governments, in the military, and in commercial applications. Enterprise-wide network security infrastructures, government IDs, secure electronic banking, investing and other financial transactions, retail sales, law enforcement, and health and social services are already utilizing these technologies. Utilized alone or integrated with other technologies such as smart cards, encryption keys and digital signatures, biometrics are beginning to pervade nearly all aspects of the economy and our daily lives.

Utilizing biometrics for personal authentication is considerably more accurate than current methods (such as the utilization of passwords or PINs). This is because biometrics links the event to a particular individual (a password or token may be used by someone other than the authorized user), is convenient (nothing to carry or remember), accurate (it provides for positive authentication), can provide an audit trail and is becoming socially acceptable and inexpensive. Prices for biometric equipment range from \$250 for a fingerprint identification machine to several thousands of dollars for more sophisticated systems.

Biometric technology as a means of identification is utilized in other areas of Florida law to combat identification fraud concerning seaport security,² identification cards and drivers licenses,³ the statewide cancer registry,⁴ and for use of personal identification information relating to criminal matters.⁵

Motor Vehicle Law-Personal Injury Protection Benefits

Under the Florida Motor Vehicle Personal Injury Protection (PIP) law, every owner of a four-wheeled motor vehicle registered in the state is required to maintain \$10,000 of no-fault personal injury protection (PIP) insurance and \$10,000 in property damage (PD) insurance. Subject to co-payments and other restrictions, PIP insurance provides compensation for bodily injuries to the insured driver and passengers regardless of who is at fault in an accident. This coverage also provides the policyholder with immunity from liability for economic damages up to the policy limits and for non-economic damages (pain and suffering) for most injuries. However, the immunity does not extend to certain injuries as defined by law.⁶

¹ Of this class of biometrics, technologies for signature and voice are the most developed.

² S. 311.125, F.S.

³ S. 322.051, F.S.

⁴ S. 385.202, F.S.

⁵ S. 817.568, F.S.

⁶ These types of injuries include: (1) significant and permanent loss of an important bodily function; (2) permanent injury within a reasonable degree of medical probability (other than scarring or disfigurement); (3) significant and permanent scarring or disfigurement; or (4) death. This is known as the "verbal threshold." In summary, a plaintiff must suffer a permanent injury in order to seek pain and suffering damages against a motorist with PIP coverage.

Personal injury protection covers the named insured, relatives residing in the same household, passengers, persons driving the vehicle with the insured's permission, and persons struck by the motor vehicle while not an occupant of a self-propelled vehicle. With respect to injuries sustained in a motor vehicle accident, regardless of who is at fault, a vehicle owner's PIP coverage will pay 80 percent of medical costs, 60 percent of lost income, and a \$5,000 per-person death benefit, up to a limit of \$10,000.

Current law provides that physicians, hospitals, or others treating persons covered by PIP can charge the insurer and injured party only a reasonable amount for services rendered, if the insured receiving such treatment (or guardian) has countersigned the bill, invoice, or claim form upon which such charges are to be paid for as having actually been rendered.⁷ In no event can the charges be in excess of the amount customarily charged. Further, an insurer or insured is not required to pay a claim or charges made by a broker: for services that are not lawful when rendered; to persons who submit false or misleading statements relating to claims or charges; to persons who submit bills which do not substantially meet requirements relating to specified medical procedural codes; for treatments that are upcoded or improperly unbundled; and for medical services billed by a physician (not provided in a hospital), unless the services are rendered by such physician and incident to his/her services and included on the physician's bill.

When the insured is initially treated by the physician or other entity providing medical services, the insured (or his or her guardian), must execute a "disclosure and acknowledgment form"⁸ which reflects at a minimum that:

- the insured, or guardian, must countersign the form attesting to the fact that the services set forth therein were actually rendered;
- the insured, or guardian, has the right and duty to confirm that the services were rendered;
- the insured, or guardian, was not solicited to seek medical services from the provider;
- the provider rendering the service explained the services to the insured, or guardian; and
- if the insured notifies the insurer in writing of a billing error, the insured may be entitled to a certain percentage of a reduction in the amounts paid by the insured's motor vehicle insurer.

The physician has an affirmative duty to explain the services rendered to the insured so that the insured, or guardian, countersigns the form with informed consent. Furthermore, the physician must sign, by his or her own hand, the disclosure and acknowledgment form. After the initial treatment of the insured by the health care provider, the provider must maintain a patient log signed by the insured, in chronological order by date of service, which is consistent with the services being rendered to the insured as claimed.

⁷ S. 627.736(5), F.S.

⁸ The "disclosure and acknowledgment form" must be approved by the Office of Insurance Regulation (OIR) and as a rule by the Financial Services Commission (FSC). According to OIR officials, the form is expected to be adopted by the FSC in January 2004.

Presumptions in Law

A presumption is defined under the Florida Evidence Code as an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established.⁹ The law provides that, except for presumptions that are conclusive under the law from which they arise, a presumption is rebuttable. Every rebuttable presumption is either:

1. A presumption affecting the *burden of producing evidence*¹⁰ and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or
2. A presumption affecting the *burden of proof* that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

All rebuttable presumptions which are not defined as presumptions affecting the burden of producing evidence are presumptions affecting the burden of proof.

III. Effect of Proposed Changes:

Section 1 Amends s. 627.732, F.S., relating to definitions under the motor vehicle insurance law, to add two new terms: “biometrics,” which means a computer-based biological imprint; and “biometric time date technology,” which means technology that uses biometric imprints to document the exact date and time a biological imprint was made or recognized.

Section 2 Amends s. 627.736, F.S., relating to charges for treatment of injured persons as to personal injury protection benefits, to state that it shall be presumed that the insured was present in the provider’s office for the time the billed services were rendered if the provider uses biometric time date technology that verified that fact. It provides that a health care provider may use biometric time date technology in lieu of the patient signing the patient log when that patient receives treatment or services.

Section 3 Provides that the act shall take effect on July 1, 2004.

The effect of this legislation is that it creates a legal presumption of fact as to the use of biometric time date technology if such technology verifies that the insured was present in the provider’s office for the time the billed services were rendered. The presumption affects the burden of proof that is imposed on the party against whom it operates; but such presumption may be rebutted by the offer of credible counter-evidence. The bill also allows biometric time date technology to be used instead of the insured signing the “patient log” when the insured receives subsequent PIP treatments or services. The current law still requires the health care provider to

⁹ Sections 90.301 through 90.304, F.S. This provision is applicable only in civil actions or proceedings.

¹⁰ In a civil action or proceeding, unless otherwise provided by statute, a presumption established to facilitate the determination of the particular action in which the presumption is applied, rather than to implement public policy, is a presumption affecting the burden of producing evidence. All rebuttable presumptions which are not defined as presumptions affecting the burden of producing evidence are presumptions affecting the burden of proof.

maintain the patient log in chronological order by date of service, which is consistent with the services being rendered to the insured as claimed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Physicians and providers of medical services may benefit under the provisions of the bill because utilizing biometric technology may facilitate their bills being paid in a more expeditious fashion. Further, using this technology would help providers verify to insurers that the insured was in the provider's office at the time and date in question.

The impact on PIP insurers is uncertain. The use of biometric technology may help reduce fraudulent claims that could result from forged signatures or utilization of other false identifiers. Insurers that intend to dispute the presumption created in the bill would have to provide evidence to overcome the presumed fact that the insured was in the provider's office at the time and date the billed services were rendered if biometric technology is utilized for verification.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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