

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 355 Motor Vehicle Insurance Costs
SPONSOR(S): Ambler
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (sub)		Cheek	Cooper
2) Insurance			
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

“Biometrics” is a computer-based biological imprint. The automated method recognizes 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. Biometric time date technology means technology that uses biometric imprints to document the exact date and time a biological imprint was made or recognized.

The bill provides that the use of biometric time date technology by a health care provider rendering treatment to an insurer for motor vehicle personal injury protection (PIP) benefits creates a legal presumption that the insured received treatment or services specified in the bill. The presumption may be rebutted by credible counter-evidence establishing the nonexistence of the presumed fact. The bill also provides that countersignatures may be done by biometric or electronic means.

The bill does not appear to have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

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. 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 personal identification numbers [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, identification cards and driver's licenses, the statewide cancer registry, and for use of personal identification information relating to criminal matters.

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 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.

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 as having actually been rendered. 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 that 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," 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 service 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 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 that is consistent with the services being rendered to the insured as claimed.

Presumptions in Law

A presumption is defined under the Florida Evidence Code as an assumption of fact that the law makes from the existence of another fact or group of facts found or otherwise established. 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* 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 that are not defined as presumptions affecting the burden of producing evidence are presumptions affecting the burden of proof.

Major Changes to Law

The bill adds two new definitions under the motor vehicle insurance law: "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.

The bill provides that the use of biometric time date technology by a health care provider rendering treatment to an insurer for motor vehicle personal injury protection (PIP) benefits creates a legal presumption that the insured received treatment or services specified in the bill. 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 provides that countersignatures may be done by biometric or electronic means.

C. SECTION DIRECTORY:

Section 1: Amends s. 627.732, F.S., *relating to definitions under the motor vehicle insurance law.*

Section 2: Amends s. 627.736, F.S., *relating to charges for treatment of injured persons.*

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

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:

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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.