

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: SB 238

SPONSOR: Senator Campbell

SUBJECT: Personal Injury Protection Insurance (Biometric technology)

DATE: January 10, 2005

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

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

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## I. Summary:

Senate Bill 238 provides that motor vehicle personal injury protection (PIP) providers may use biometric time date technology located in their offices to document that the insured was present at a specific time, date, and place at which a biometric imprint was made. The bill provides that the health care provider may use biometric time date technology in the form of an electronic signature in lieu of the insured signing the "patient log" when that insured goes to the provider for subsequent PIP treatment or services. Biometrics are automated methods of recognizing a person based on certain physiological or behavioral characteristics. Examples include signature verification; facial recognition; fingerprint scans; hand or finger geometry; iris, retinal and vein scans; 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.<sup>1</sup> 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

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

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,<sup>2</sup> identification cards and driver's licenses,<sup>3</sup> the statewide cancer registry,<sup>4</sup> and for use of personal identification information relating to criminal matters.<sup>5</sup>

### **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.<sup>6</sup>

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

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<sup>2</sup> S. 311.125, F.S.

<sup>3</sup> S. 322.051, F.S.

<sup>4</sup> S. 385.202, F.S.

<sup>5</sup> S. 817.568, F.S.

<sup>6</sup> 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.

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.<sup>7</sup> 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"<sup>8</sup> 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.

In 2003, the Legislature enacted Chapter 2003-411, L.O.F., which provided that effective October 1, 2007, specified sections of the Motor Vehicle No-Fault Law are repealed, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment becomes law to take effect for policies issued or renewed on or after October 1, 2006.<sup>9</sup> The law authorized insurers to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

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<sup>7</sup> S. 627.736(5), F.S.

<sup>8</sup> The "disclosure and acknowledgment form" was approved by the Office of Insurance Regulation (OIR) and promulgated as a rule by the Financial Services Commission (FSC) (Rule 690-176.013, F.A.C.).

<sup>9</sup> The enumerated sections are: 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S.

### 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: “biometric,” which means a computer-based biological imprint generally recognized by the scientific or law enforcement community as capable of identifying an individual; 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 pertaining to personal injury protection (PIP) benefits, to state that a provider may use biometric time date technology, located in that provider’s office, to document that the insured was present at a specific time, date, and place at which a biometric imprint was made. The bill also allows biometric time date technology as an “electronic signature” under ss. 668.003 and 668.004, F.S., to be used instead of the insured signing the “patient log” when the insured goes to the provider for subsequent visits. The bill retains the current law that requires the health care provider to maintain the patient log in chronological order by date of service, which is consistent with the services being rendered to the insured as claimed.

Section 668.003, F.S., defines an “electronic signature” to mean any “letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing.” A writing is electronically signed if an electronic signature is logically associated with such writing. Section 668.004, F.S., provides that an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature.

**Section 3** Provides that the act shall take effect on July 1, 2005.

### 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 PIP 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 physically present in the provider's office at the time and date in question and would help eliminate "ghost" billing.

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.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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