Department of Finance and Administration

Legislative Impact Statement

Bill: HB1030
Bill Subtitle: CONCERNING THE USE OF A MOTOR VEHICLE ACCIDENT REPORT FOR COMMERCIAL PURPOSES; TO REGULATE THE RELEASE OF MOTOR VEHICLE ACCIDENT REPORTS.

Basic Change :

Sponsor: Representative D. Altes

This bill provides additional restrictions on the use of accident reports for commercial purposes. Practitioners, runners, or others as defined in the proposed bill, will be prohibited from soliciting a patient or customer within 60 days of a motor vehicle accident to induce or cause the patients to seek medical treatment, or to assert a claim against an insured, a governmental entity or an insurer on behalf of an injured person. The proposed bill provides for certain exceptions such as the injured party's insurer, doctor or practitioner.This bill makes a violation of this section a Class A misdemeanor.

Revenue Impact :

None

Taxpayer Impact :

Persons involved in automobile accidents will be less likely to be solicited by persons wanting to represent them.

Resources Required :

None

Time Required :

None

Procedural Changes :

There are no procedural changes required.

Other Comments :

The bill provides definitions, but "department" is not defined in the bill as the Arkansas State Police.

Legal Analysis :

HB1030 makes it unlawful for a medical practitioner or other persons related to the medical profession to use motor vehicle accident reports made by state and local law enforcement agencies for commercial solicitation or other commercial within 60 days of the motor vehicle accident. This prohibition does not apply to parties to the accident or to insurers or other

representatives of the parties. This prohibition also does not apply to "public media," which includes telephone or professional directories, newspapers, and radio or television broadcasters. Violation of this provision is a Class A misdemeanor.

HB1030 creates four new criminal offenses that are classified as Class "A" misdemeanors punishable by up one year in jail and/or a $1,000.00 fine. As an initial matter, an Arkansas court would likely find HB1030 an unconstitutional infringement of commercial speech and that HB1030 is unconstitutionally vague. Commercial speech is "expression related solely to the economic interests of the speaker and its audience." Central Hudson Gas & Elec. v. Public Serv. Comm'n, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). The United States Supreme Court has held that "the First Amendment, as applied to the States through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation." Id.

The U.S. Supreme Court has explained that a restriction on commercial free speech must be "narrowly tailored to achieve the desired objective." Florida Bar v. Went For It, Inc., 515 U.S. 618, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995). Moreover, under U.S. Constitutional principles, it is well settled that a law is unconstitutionally vague under due process standards if it does not give a person of ordinary intelligence fair notice of what is prohibited, and it is so vague and standardless that it allows for arbitrary and discriminatory enforcement. See Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); Thompson v. Arkansas Social Serv., 282 Ark. 369, 669 S.W.2d 878 (1984).

The first offense of HB1030 prohibits a "practitioner" "to solicit a patient or customer within sixty (60) days of a motor vehicle accident using a motor vehicle accident report for the purpose of commercial solicitation." As an initial matter, the language of HB1030 is vague and unclear how a practitioner would "use" a motor vehicle accident report to solicit a potential patient or customer. It is conceivable that a practitioner could use the identifying personal information obtained from a motor vehicle accident report to solicit a customer or person. Not only would the first offense enumerated in HB1030 be subject to a constitutional attack as a restriction of protected commercial speech, but also this offense appears to be unconstitutionally vague.

The second offense of HB1030 prohibits a "practitioner" "to compensate or give anything of value to a person acting as a runner or organization to recommend or secure employment by a patient or customer if a practitioner's intent is to obtain benefits under a contract of insurance or to assert a claim against an insured or an insurer for providing services to the patient or customer within sixty (60) days of a motor vehicle accident." The second offense does not involve the use of motor vehicle accident reports by any person. Rather, it is an outright ban on a practitioner compensating another person or organization to act as a "runner" within sixty (60) days of an accident. Like the first offense, this offense would be subject to constitutional challenges for infringing commercial speech and for vagueness.

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The third offense of HB1030 makes it "unlawful for a practitioner, runner, or a person acting on his or her behalf, to solicit a patient or customer within sixty (60) days of a motor vehicle accident to induce or cause the patient or customer to seek benefits under a contract of insurance, to seek medical treatment, or to assert a claim against an insured, a governmental entity, or an insurer on behalf of an injured person." The third offense is clearly a violation of constitutional protections of commercial speech. Also, it is unconstitutionally vague by reason that "solicit" is not defined in HB1030. Moreover, it would be criminal offense for a medical provider to approach a person that has been injured (for example, immediately following a traffic accident) and offer medical assistance.

The fourth offense of HB makes it "unlawful for a person or for a firm, corporation, partnership, or association to act as a runner for a practitioner on a motor vehicle accident within sixty (60) days of the motor vehicle accident." This offense does not even criminalize any affirmative conduct. Rather, it criminalizes the mere status of being employed as a "runner" within sixty days of a motor vehicle accident. The U.S. Supreme Court has struck down criminal statutes of "status" offenses as cruel and unusual punishment. See Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417 (1962).

As a final matter, HB1030 contains an exception to prosecution that states, "This prohibition does not apply if:
(A) An injured person involved in the motor vehicle collision has an ongoing relationship with the doctor, chiropractor, or other practitioner making contact;
(B) An injured person has requested information from or treatment by the doctor, chiropractor, or other practitioner; or
(C) The person or entity communication with the injured person provides health or automobile liability insurance or similar coverage for the injured person.

HB1030 is unclear whether this exception applies to all four offenses contained in HB1030, or just one of the offenses as the language of the exception suggests. That is, "*this* prohibition does not apply [...]".

HB1030 does not contain an emergency clause or an effective date.