

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
2ND CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1665

By: Erwin, Lindley and Wells
of the House

and

Shurden and Weedn of the
Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety and accident reports; amending 47 O.S. 1991, Section 40-102, as amended by Section 1, Chapter 232, O.S.L. 1996 (47 O.S. Supp. 1997, Section 40-102), which relates to traffic accident reports and solicitations; providing for penalties and remedies for violations of release of certain information to certain persons for certain purposes; authorizing certain actions; defining terms; amending Section 3, Chapter 165, O.S.L. 1993 (63 O.S. Supp. 1997, Section 1-742), which relates to solicitation; removing certain authorizations for additional actions, proceedings or remedies; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 1991, Section 40-102, as amended by Section 1, Chapter 232, O.S.L. 1996 (47 O.S. Supp. 1997, Section 40-102), is amended to read as follows:

Section 40-102. A. Every law enforcement officer who, in the regular course of duty, investigates or receives a report of a traffic accident resulting in injury to or death of a person or total property damage to an apparent extent of Three Hundred Dollars (\$300.00) or more shall prepare a written report of the accident on the standard accident report form supplied by the Department. Such reports shall be forwarded forthwith by the Police Department or other agency to the Department of Public Safety.

B. 1. No public employee or officer shall allow a person to examine or reproduce an accident report or any related investigation report if examination or reproduction of the report is sought for the purpose of making a commercial solicitation. Any person requesting an accident report may be required to state, in writing, under penalty of perjury, that the report will not be examined, reproduced, or otherwise used for commercial solicitation purposes. It shall be unlawful and constitute a misdemeanor for any person to obtain or use information from an accident report or a copy thereof for the purpose of making a commercial solicitation.

2. As used in this subsection:

- a. "commercial solicitation" means any attempt to use, or offer for use, information contained in an accident report to solicit any person named in the report, or a relative of such person, to enter into a professional, business, or commercial relationship. "Commercial solicitation" does not mean publication in a legal newspaper, as defined in Section 106 of Title 25 of the Oklahoma Statutes, or broadcast by news media for news purposes, and
- b. "accident report" means any report regarding a motor vehicle accident or collision which has been submitted by an individual or investigating officer on a form prescribed or used by the Department of Public Safety or local police department.

3. Publication in a legal newspaper, as defined in Section 106 of Title 25 of the Oklahoma Statutes, or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial solicitation purposes. Because publication by a legal newspaper or broadcast by news media for news purposes is not a resale or use of data for trade or commercial purposes, an affidavit shall not be required as a condition for allowing a member of a legal newspaper or broadcast news media to examine or obtain a copy of an accident report.

4. The Department of Public Safety and local police departments shall include the following or a similar notice upon any copy of an accident report furnished to others: "Warning - State Law. Use of contents for commercial solicitation is unlawful."

C. 1. In addition to any other penalties or remedies provided by law:

- a. a violation of this section by a health care professional or health care provider shall be grounds for disciplinary action by the state agency licensing, certifying or registering such professional or provider, and
- b. the state agency licensing, certifying or registering such professional or provider may institute an action to enjoin violation or potential violation of this section.

2. As used in this subsection:

- a. "health care professional" means any person who offers or provides health care services under a license, certification or registration issued pursuant to Title 59 of the Oklahoma Statutes; and
- b. "health care provider" means any hospital or related institution who offers or provides health care services under a license issued pursuant to Section 1-702 et seq. of Title 63 of the Oklahoma Statutes.

SECTION 2. AMENDATORY Section 3, Chapter 165, O.S.L. 1993 (63 O.S. Supp. 1997, Section 1-742), is amended to read as follows:

Section 1-742. A. 1. Any person who intentionally or knowingly pays to or accepts anything of value from any person, firm, association of persons, partnership or corporation for securing or soliciting patients for any ~~hospital~~ health care professional, health care provider or other entity providing health care services in this state, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not

less than Five Hundred Dollars (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

2. In addition to any other penalties or remedies provided by law:

- a. a violation of this section by a health care professional or health care provider shall be grounds for disciplinary action by the state agency licensing, certifying or registering such professional or provider, and
- b. the state agency licensing, certifying or registering such professional or provider may institute an action to enjoin violation or potential violation of this section. ~~The action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law.~~

B. This section shall not be construed to prohibit:

1. Advertising, except that advertising which:

- a. is false, misleading or deceptive,
- b. advertises professional superiority or the performance of a professional service in a superior manner, and
- c. is not readily subject to verification;

2. Remuneration for advertising, marketing or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is:

- a. set in advance,
- b. consistent with the fair market value of the services, and
- c. not based on the volume or value of any patient referrals or business otherwise generated between the parties; and

3. Any payment, business arrangements or payments practice not prohibited by 42 U.S.C., Section 1320a-7b(b), or any regulations promulgated pursuant thereto.

C. This section shall not apply to licensed insurers, including but not limited to, group hospital service corporations

or health maintenance organizations which reimburse, provide, offer to provide or administer hospital, medical, dental or other health-related benefits under a health benefits plan for which it is the payor when it is providing those services under a health benefits plan.

D. For purposes of this section:

1. "Health care professional" means any person who offers or provides counseling or health or mental health care under a license, certification or registration issued pursuant to Title 59 of the Oklahoma Statutes; and

2. "Health care provider" means any hospital or related institution offering or providing health care services licensed pursuant to Section 1-702 of this title.

SECTION 3. This act shall become effective November 1, 1998.

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