

SUBJECT: Barring solicitation of employment by phone or in person

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Peña, Vaught, Escobar, Hodge, Mallory Caraway, Talton
0 nays
3 absent — Riddle, Moreno, Pierson

WITNESSES: For — Jay Harvey, Texas Trial Lawyers Association; Greg Nelson, Texas Chiropractic Association; Deborah Davis; Brad Engler; Michael Kapsner; Manuel Pelaez Prada; Rogers Allen; (*Registered, but did not testify:* Robert Hoffman; Kevin Kanz)
Against — None

BACKGROUND: Penal Code sec. 38.12, the barratry statute, prohibits the solicitation of certain legal or professional services by an attorney or other professional. An attorney, chiropractor, physician, surgeon, private investigator, or any person registered by a Texas health care regulatory agency cannot write a person or family member of a person injured in an accident or disaster to solicit employment.

DIGEST: HB 1519 would prohibit a chiropractor, physician, surgeon, private investigator, or any person registered by a Texas health care regulatory agency from soliciting employment pertaining to a personal injury stemming from an accident or disaster within 31 days of the injury. This would include solicitations in person or by phone made to either the injured party or a relative of the injured party. A violation would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).
The bill would take effect September 1, 2007.

SUPPORTERS SAY: HB 1519 would provide further protection to the public from invasive professional solicitation. The bill would prohibit solicitation of accident or disaster victims in person or by telephone within a reasonable time restriction of 31 days.

Accident victims have the judgment to know when they require professional services such as health care, and 31 days would be an appropriate timeframe for people independently to seek such services without being preyed upon when they are grieving and vulnerable. Individuals also should be able to choose services based on the quality of service offered and not because of solicitation.

Unethical professionals sometimes obtain victim information from police accident reports or by other unscrupulous means. Allowing unethical professionals to solicit business is unfair to ethical professionals who may lose business because of the solicitation. Such solicitations also reflect poorly on the perceived integrity of an entire profession.

HB 1519 would not hinder free speech, because many rulings, including the U.S. Supreme Court in *Florida Bar v. Went for It*, 515 U.S. 618 (1995), recognize that solicitations are commercial speech. Commercial speech does not enjoy the same measure of protection as other types of speech protected in the First Amendment. Given that commercial speech is subject to “modes of regulation that might be impermissible in the realm of noncommercial expression,” the courts are able to balance the necessity of such speech with victims’ rights. The Supreme Court has recognized that that states have a substantial interest in protecting the privacy of accident victims; protecting accident victims and their families from the emotional distress of unwanted solicitation; and protecting the integrity of professionals licensed by the state.

OPPONENTS
SAY:

HB 1519 further would criminalize a professional’s right to free speech in contacting a person that might desperately want or need professional services. Some people may have difficulty seeking medical help while dealing with the aftermath of an accident. The 31-day wait could prevent certain professionals from making accident victims aware of their medical options, and the delay could increase complications from injuries. Unwarranted intrusion and unethical behavior should be regulated by professional codes of conduct without further criminal sanctions.