

## Kentucky's Revised Accident Victim Anti-Solicitation Law Under Fire, Again

By: Amy O' Connor

A Kentucky law revision limiting the solicitation of accident victims within 30 days of a crash has gone into effect but is already being challenged in the state by multiple chiropractic groups that say the law is unconstitutional.

The Kentucky "New Solicitation Statute" makes it illegal to solicit people involved in a motor vehicle accident for medical care purposes. The law also says it is illegal to encourage victims to knowingly file phony and inflated medical claims.

Rep. Jim Gooch, who co-sponsored the legislation, said the bill was part of his effort to address problems with Kentucky's no-fault law, which he says has been abused since it was enacted in the 1970's.

Because of the state's no-fault stance, attorneys or medical providers could take advantage of accident victims by using their personal injury protection (PIP) benefits for fees or unneeded services following an accident, says Gooch. In Kentucky, most consumers carry the minimum of \$10,000 in PIP coverage.

"If a provider uses all of the [PIP] money early then the victim doesn't have any left for loss of wages, etc., and people need those additional dollars for other things than medical bills," he said.

According to Tim Lynch, director of Government Affairs for the National Insurance Crime Bureau, Kentucky has become a hotbed for this type of accident victim solicitation with the state ranking eighth in the country in 2014 behind more populated states Florida, New York and California for "Questionable Claims" (QC). Louisville ranks eighth for "Suspicious Vehicle Collisions" (SVC) behind Los Angeles, New York, Miami and Las Vegas, and ahead of Philadelphia and Boston.

"Louisville ranks very high and rivals population centers that are larger in terms of the number of accidents per 100,000 in population," Lynch said. "People swoop up [police] accident reports and start soliciting. It's all part of a large organized scheme."

Howard Goldblatt, director of Government Affairs for the Coalition Against Insurance Fraud in Washington D.C., says this assertion in the lawsuit really has no credibility to it.

"We scratch our head at that argument because it's not that insurers are soliciting – the insurers are contacting their insureds to help

*"We scratch our head at that argument because it's not that insurers are soliciting – the insurers are contacting their insureds to help resolve a claim. That is not soliciting," said Howard Goldblatt, the Coalition's director of government affairs.*



**Coalition Against Insurance Fraud**

resolve a claim," he said. "That is not soliciting."

Treech agrees and is hopeful that the plaintiffs who are pinning their hopes on this argument will not be successful.

"Since we did a specific ban on certain providers we didn't need to include an exception for insurance companies," he said. "We don't think [the plaintiffs] are reading the judge's opinion very well. We only included some so we didn't need to exclude anyone else. It was a very targeted means of banning solicitation."

Other states that have PIP fraud laws challenged on constitutional grounds, such as Texas, have had their laws upheld, said Goldblatt.

"We think the Kentucky courts are an outlier because there are a number of states that have similar laws and similar rules and it is only in Kentucky that it has been overturned," he said.

NICB's Lynch said it is unfortunate a lawsuit against fighting the fraud problem has now come up in Kentucky twice, especially when the state has had such a problem with suspicious/questionable claims.

"This legislation was written to alleviate a court challenge and here it is being challenged, but that doesn't mean it will be overturned," he said.