

H. B. 4563

(By Delegates Frich, Ellington, Householder,
Howell, Walters, McCuskey, E. Nelson, Pasdon,
Arvon, R. Smith and Butler)

[Introduced February 17, 2014; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §33-12D-1, §33-12D-2,
§33-12D-3, §33-12D-4, §33-12D-5, §33-12D-6, §33-12D-7 and
§33-12D-8, all relating to health insurance exchange
navigators and nonnavigator assisters; providing protection
against consumer identity theft by navigators and nonnavigator
assisters; definitions; requiring registration of navigators
and nonnavigator assisters; qualifications and requirements
for registration; application for registration; information
required for application; application fee; criminal background
check; disqualification from registration for conviction for
certain offenses and certain other circumstances; establishing
a registered navigator and nonnavigator assister list;
requiring notice of change of registrant information;
prohibiting certain conduct; suspension or revocation of
registration; administrative penalties upon a finding of

1 certain prohibited conduct; promulgation of legislative rules.

2 *Be it enacted by the Legislature of West Virginia:*

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §33-12D-1, §33-12D-2,
5 §33-12D-3, §33-12D-4, §33-12D-5, §33-12D-6, §33-12D-7 and
6 §33-12D-8, all to read as follows:

7 **ARTICLE 12D. PROTECTION AGAINST CONSUMER IDENTITY THEFT BY HEALTH**
8 **INSURANCE EXCHANGE NAVIGATORS AND NONNAVIGATOR**
9 **ASSISTORS.**

10 **§33-12D-1. Definitions.**

11 For the purposes of this article:

12 (1) "Affordable Care Act" means the federal Patient Protection
13 and Affordable Care Act (P.L. 111-148), as amended by the federal
14 Health Care and Education Reconciliation Act of 2010 (P.L.
15 111-152).

16 (2) "Exchange" means an American health benefit exchange
17 operating in West Virginia under Affordable Care Act.

18 (3) "Navigator" means an individual authorized by an exchange
19 to serve as a navigator, or who works on behalf of an entity
20 authorized by an exchange to serve as a navigator, pursuant to 42
21 U.S.C. 18031(i)(1), who facilitates the selection of a qualified
22 health plan through the exchange and performs any other duties
23 specified under 42 U.S.C. 18031(i)(3).

24 (4) "Nonnavigator assister" means a person or organization

1 authorized to assist consumers to enroll and understand the health
2 insurance exchange under 45 CFR § 155.205(d) and (e).

3 (5) "Commissioner" means the West Virginia Insurance
4 Commissioner.

5 **§33-12D-2. Registration required; purpose.**

6 (a) An individual may not act as, offer to act as, or
7 advertise any service as a navigator or nonnavigator assister
8 unless registered with the commissioner under this article.

9 (b) The purpose of registration is to identify qualified
10 individuals to assist the insurance-buying public in selecting a
11 qualified health plan through an exchange by providing fair,
12 accurate, and impartial information regarding qualified health
13 plans and the availability of premium tax credits and cost-sharing
14 reductions for such plans, and to protect the public from
15 unauthorized activities or conduct.

16 (c) Through the certification of qualified individuals, the
17 state seeks to prevent breaches of consumer privacy and help
18 protect personally identifiable information.

19 **§33-12D-3. Qualifications for registration; application required.**

20 (a) The commissioner may not approve the registration of an
21 individual as a navigator or nonnavigator assister who does not
22 meet the following requirements:

23 (1) Is a natural person at least eighteen years of age;

24 (2) Is a United States citizen or legal alien who possesses

1 work authorization from the United States Bureau of Citizenship and
2 Immigration Services; and

3 (3) Has successfully completed all training for a navigator or
4 nonnavigator assister as required by the federal government or the
5 exchange.

6 (b) To be registered as a navigator or nonnavigator assister,
7 an applicant must submit a sworn, signed, written application to
8 the commissioner on a form prescribed by the commissioner, meet the
9 qualifications for registration as a navigator or nonnavigator
10 assister, and make payment in advance of all applicable fees.
11 Individuals previously disqualified must apply for reinstatement
12 using the same procedures required for initial registration.

13 (c) The applicant must set forth all of the following
14 information in the application:

15 (1) His or her full name, age, residence address, business
16 address, mailing address, contact telephone numbers, including a
17 business telephone number if applicable, and e-mail address.

18 (2) A statement of acknowledgment of conduct that is
19 prohibited under this article and the penalties associated with the
20 conduct.

21 (3) Certification that the training required by the federal
22 government or the exchange has been successfully completed.

23 (4) Such additional information as the commissioner may deem
24 proper to enable him or her to determine the character, experience,

1 ability, and other qualifications of the applicant to participate
2 as a registered navigator or nonnavigator assister.

3 (d) Each application must be accompanied by payment of a
4 nonrefundable application fee established by the commissioner in an
5 amount expected to generate revenue sufficient to cover the costs
6 incurred by the commissioner in implementing this article.

7 (e) All applicants must submit to a criminal background check.
8 An applicant must submit a set of his or her fingerprints to the
9 commissioner. The commissioner shall submit the applicants'
10 fingerprints to the West Virginia State Police and to the Federal
11 Bureau of Investigation Criminal Justice Information Services
12 Division for the state and national criminal history record checks.
13 The commissioner may not approve an application for registration as
14 a navigator or nonnavigator assister if fingerprints have not been
15 submitted and a criminal background check completed.

16 (f) In addition to information requested in the application,
17 the commissioner may propound any reasonable interrogatories to an
18 applicant relating to the applicant's qualifications, residence,
19 prospective place of business, and any other matters that, in the
20 opinion of the commissioner, are deemed necessary or advisable for
21 the protection of the public and to ascertain the applicant's
22 qualifications. In addition to the submission of fingerprints for
23 criminal background screening, the commissioner may make such
24 further investigations as he or she may deem advisable of the

1 applicant's character, experience, background, and fitness for
2 registration as specified under this article.

3 **§33-12D-4. Disqualification from registration.**

4 (a) As used in this section, the terms "felony of the first
5 degree" and "capital felony" include:

6 (1) Treason under section one, article one, chapter sixty-one
7 of this code;

8 (2) The crime of murder under sections one, two and three,
9 article two, chapter sixty-one of this code;

10 (3) The crime of robbery involving the use or presenting of
11 firearms or other deadly weapons under section twelve, article two,
12 chapter sixty-one of this code;

13 (4) The crime of kidnapping under section fourteen-a, article
14 two, chapter sixty-one of this code;

15 (5) The crime of first degree arson under section one, article
16 three, chapter sixty-one of this code;

17 (6) The crime of sexual assault in the first degree under
18 section three, article eight-b, chapter sixty-one of this code; and

19 (7) Any felony designated as a "felony of the first degree" or
20 a "capital felony" in the jurisdiction in which the plea is entered
21 or judgment is rendered.

22 (b) An applicant who commits a felony of the first degree; a
23 capital felony; a felony involving money laundering, fraud, or
24 embezzlement; or a felony directly related to the financial

1 services business is permanently barred from applying for
2 registration under this article. This bar applies to convictions,
3 guilty pleas, or nolo contendere pleas, regardless of adjudication,
4 by an applicant.

5 (c) For all other crimes not described in subsection (b), the
6 commissioner may adopt rules establishing the process and
7 application of disqualifying periods including:

8 (1) A ten-year disqualifying period for all felonies involving
9 moral turpitude which are not specifically included in subsection
10 (b) in this section.

11 (2) A five-year disqualifying period for all felonies not
12 specifically included in subsection (b) of this section or
13 subdivision (1) of this subsection.

14 (3) A five-year disqualifying period for all misdemeanors
15 directly related to the financial services business.

16 (d) The commissioner may adopt rules providing additional
17 disqualifying periods due to the commitment of multiple crimes and
18 other factors reasonably related to the applicant's criminal
19 history. The rules must provide for mitigating and aggravating
20 factors and should also implement policies to mitigate or eliminate
21 the risk of violations of federal or state consumer privacy laws.
22 However, mitigation may not result in a disqualifying period of
23 less than five years and may not mitigate the disqualifying periods
24 in paragraph (c) (2) or paragraph (c) (3).

1 (e) For purposes of this section, the disqualifying periods
2 begin upon the applicant's final release from supervision or upon
3 completion of the applicant's criminal sentence, including the
4 payment of fines, restitution, and court costs for the crime for
5 which the disqualifying period applies.

6 (f) After the disqualifying period has been met, the burden is
7 on the applicant to demonstrate to the satisfaction of the
8 commissioner that he or she has been rehabilitated and does not
9 pose a risk to the insurance-buying public and is otherwise
10 qualified for registration.

11 **§33-12D-5. Registered navigator and nonnavigator assister list.**

12 Upon approval of an application for registration under this
13 article, the commissioner shall add the name of the registrant to
14 its publicly available list of registered navigators and
15 nonnavigator assisters in order for operators of an exchange and
16 other interested parties to validate a navigator's or nonnavigator
17 assister's registration.

18 **§33-12D-6. Notice of change of registrant information.**

19 A navigator or nonnavigator assister must notify the
20 commissioner, in writing, within thirty days after a change of
21 name, residence address, principal business street address, mailing
22 address, contact telephone number, or e-mail address. Failure to
23 notify the commissioner within the required time is subject to a
24 fine of up to \$250 for the first offense, and a fine of at least

1 \$500 or suspension or revocation for a subsequent offense.

2 **§33-12D-7. Conduct prohibited; denial, revocation, or suspension**
3 **of registration.**

4 (a) As provided in section three, article twelve of this
5 chapter, only a person licensed as an insurance producer may sell,
6 solicit or negotiate insurance.

7 (b) The commissioner may deny an application for registration
8 as a navigator or nonnavigator assister or suspend or revoke the
9 registration of a navigator or nonnavigator assister if it finds
10 that any one or more of the following grounds exist:

11 (1) Violation of this article or any applicable provision of
12 this chapter;

13 (2) Violation of an order or rule of the commissioner;

14 (3) Having been the subject of disciplinary or other adverse
15 action by the federal government or an exchange as a result of a
16 violation of any provision of Affordable Care Act;

17 (4) Lack of one or more of the qualifications required under
18 this article;

19 (5) Material misstatement, misrepresentation, or fraud in
20 obtaining or attempting to obtain registration under this article;

21 (6) Any cause for which issuance of the registration could
22 have been refused if it had existed and been known to the
23 commissioner;

24 (7) Having been found guilty or having pled guilty or nolo

1 contendere to a felony or a crime punishable by imprisonment of one
2 or more years under the law of the United States or any state
3 thereof or under the law of any county, without regard to whether
4 a judgment of conviction has been entered by the court having
5 jurisdiction of such cases;

6 (8) Failure to inform the commissioner in writing within
7 thirty days after pleading guilty or nolo contendere to, or being
8 convicted or found guilty of, any felony or crime punishable by
9 imprisonment of one or more years under the law of the United
10 States or of any state thereof, or under the law of any other
11 country without regard to whether a judgment of conviction has been
12 entered by the court having jurisdiction of the case; or

13 (9) Violating or knowingly aiding, assisting, procuring,
14 advising or abetting another in violating the insurance code.

15 (c) If the commissioner finds that one or more grounds exist
16 for the suspension or revocation of a navigator's or nonnavigator
17 assister's registration, the commissioner may, in lieu of or in
18 addition to suspension or revocation, impose upon the registrant an
19 administrative penalty of up to \$500, or if the commissioner finds
20 willful misconduct or a willful violation, an administrative
21 penalty of up to \$3,500.

22 (d) A person who acts as a navigator or nonnavigator assister
23 without being registered as required under this article is subject
24 to an administrative penalty of up to \$1,500.

1 (e) If a navigator or nonnavigator assister registered under
2 this article enters a plea of guilty or nolo contendere, or is
3 convicted by a court of a violation of this code or a felony, the
4 registration of such individual shall be immediately revoked by the
5 commissioner. The individual may subsequently request a hearing
6 pursuant to section thirteen, article two of this chapter, which
7 shall be expedited by the commissioner. The sole issue at the
8 hearing shall be whether the revocation of registration should be
9 rescinded because such individual was not in fact convicted of a
10 violation of this code or a felony.

11 (f) An order by the commissioner suspending the registration
12 of a navigator or nonnavigator assister must specify the period
13 during which the suspension is to be in effect, which may not
14 exceed two years. The registration shall remain suspended during
15 the period specified, subject to rescission or modification of the
16 order by the commissioner, or modification or reversal by the
17 court, before expiration of the suspension period. A registration
18 that has been suspended may not be reinstated except upon the
19 filing and approval of an application for reinstatement; however,
20 the commissioner may not approve an application for reinstatement
21 if it finds that the circumstance or circumstances for which the
22 registration was suspended still exist or are likely to recur. An
23 application for reinstatement is also subject to disqualification
24 and waiting periods before approval on the same grounds that apply

1 to applications for registration under section four of this
2 article.

3 (g) An individual whose registration has been revoked may not
4 apply for registration as a navigator or nonnavigator assister
5 until two years after the effective date of such revocation or, if
6 judicial review of such revocation is sought, within two years
7 after the date of the final court order or decree affirming the
8 revocation.

9 (h) Revocation or suspension of the registration of a
10 navigator or nonnavigator assister under this article shall be
11 immediately reported by the commissioner to the operator of the
12 exchange. An individual whose registration has been revoked or
13 suspended may not act as, offer to act as, or advertise any service
14 as a navigator or nonnavigator assister until the commissioner
15 reinstates such registration.

16 (i) The commissioner may propose rules for legislative
17 approval in accordance with the provisions of article three,
18 chapter twenty-nine-a of this code establishing specific penalties
19 against registrants in accordance with this section. The purpose
20 of revocation or suspension is to provide a sufficient penalty to
21 deter behavior incompatible with the public health, safety, and
22 welfare. The imposition of a revocation or the duration of a
23 suspension shall be based on the type of conduct and the likelihood
24 that the propensity to commit further illegal conduct has been

1 overcome at the time of eligibility for reinstatement. The length
2 of suspension may be adjusted based on aggravating or mitigating
3 factors established by rule and consistent with this purpose.

4 **§33-12D-8. Rulemaking.**

5 The commissioner may propose rules for legislative approval in
6 accordance with the provisions of article three, chapter
7 twenty-nine-a of this code to administer this article.

NOTE: The purpose of this bill is to provide adequate protections and safeguards for West Virginia consumers by requiring the registration and regulation of health insurance exchange navigators and nonnavigator assisters operating in accordance with the federal Patient Protection and Affordable Care Act. Through the certification of qualified individuals, the state seeks to prevent breaches of consumer privacy and help protect personally identifiable information.

This article is new; therefore, it has been completely underscored.