

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2660

2015 Carryover

(BY DELEGATES FRICH, WALTERS, BUTLER,
HOUSEHOLDER, ARVON, ELLINGTON, SUMMERS,
ROHRBACH AND WAXMAN)

[Introduced January 13, 2016; referred to the
Committee on Health and Human Resources then the
Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

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

§33-12D-1. Definitions.

1 For the purposes of this article:
 2 (1) "Affordable Care Act" means the federal Patient Protection and Affordable Care Act
 3 (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010

4 (P.L. 111-152).

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

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

11 (4) "Nonnavigator assister" means a person or organization authorized to assist
12 consumers to enroll and understand the health insurance exchange under 45 CFR § 155.205(d)
13 and (e).

14 (5) "Commissioner" means the West Virginia Insurance Commissioner.

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

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

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

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

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

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

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

4 (2) Is a United States citizen or legal alien who possesses work authorization from the
5 United States Bureau of Citizenship and Immigration Services; and

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

8 (b) To be registered as a navigator or nonnavigator assister, an applicant must submit a
9 sworn, signed, written application to the commissioner on a form prescribed by the commissioner,
10 meet the qualifications for registration as a navigator or nonnavigator assister, and make payment
11 in advance of all applicable fees. 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 information in the application:

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

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

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

21 (4) Such additional information as the commissioner may deem proper to enable him or
22 her to determine the character, experience, ability, and other qualifications of the applicant to
23 participate as a registered navigator or nonnavigator assister.

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

27 (e) All applicants must submit to a criminal background check. An applicant must submit
28 a set of his or her fingerprints to the commissioner. The commissioner shall submit the
29 applicants' fingerprints to the West Virginia State Police and to the Federal Bureau of Investigation
30 Criminal Justice Information Services Division for the state and national criminal history record
31 checks. The commissioner may not approve an application for registration as a navigator or
32 nonnavigator assister if fingerprints have not been submitted and a criminal background check
33 completed.

34 (f) In addition to information requested in the application, the commissioner may propound
35 any reasonable interrogatories to an applicant relating to the applicant's qualifications, residence,
36 prospective place of business, and any other matters that, in the opinion of the commissioner, are
37 deemed necessary or advisable for the protection of the public and to ascertain the applicant's
38 qualifications. In addition to the submission of fingerprints for criminal background screening,
39 the commissioner may make such further investigations as he or she may deem advisable of the
40 applicant's character, experience, background, and fitness for registration as specified under this
41 article.

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

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

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

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

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

8 (4) The crime of kidnapping under section fourteen-a, article two, chapter sixty-one of this

9 code;

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

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

14 (7) Any felony designated as a “felony of the first degree” or a “capital felony” in the
15 jurisdiction in which the plea is entered or judgment is rendered.

16 (b) An applicant who commits a felony of the first degree; a capital felony; a felony
17 involving money laundering, fraud, or embezzlement; or a felony directly related to the financial
18 services business is permanently barred from applying for registration under this article. This
19 bar applies to convictions, guilty pleas, or nolo contendere pleas, regardless of adjudication, by
20 an applicant.

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

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

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

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

29 (d) The commissioner may adopt rules providing additional disqualifying periods due to
30 the commitment of multiple crimes and other factors reasonably related to the applicant’s criminal
31 history. The rules must provide for mitigating and aggravating factors and should also implement
32 policies to mitigate or eliminate the risk of violations of federal or state consumer privacy laws.

33 However, mitigation may not result in a disqualifying period of less than five years and may not
34 mitigate the disqualifying periods in paragraph (c)(2) or paragraph (c)(3).

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

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

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

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

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

1 A navigator or nonnavigator assister must notify the commissioner, in writing, within thirty
2 days after a change of name, residence address, principal business street address, mailing
3 address, contact telephone number, or e-mail address. Failure to notify the commissioner within
4 the required time is subject to a fine of up to \$250 for the first offense, and a fine of at least \$500
5 or suspension or revocation for a subsequent offense.

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

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

3 (b) The commissioner may deny an application for registration as a navigator or

4 nonnavigator assister or suspend or revoke the registration of a navigator or nonnavigator assister
5 if it finds that any one or more of the following grounds exist:

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

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

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

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

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

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

15 (7) Having been found guilty or having pled guilty or nolo contendere to a felony or a crime
16 punishable by imprisonment of one or more years under the law of the United States or any state
17 thereof or under the law of any county, without regard to whether a judgment of conviction has
18 been entered by the court having jurisdiction of such cases;

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

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

26 (c) If the commissioner finds that one or more grounds exist for the suspension or
27 revocation of a navigator's or nonnavigator assister's registration, the commissioner may, in lieu

28 of or in addition to suspension or revocation, impose upon the registrant an administrative penalty
29 of up to \$500, or if the commissioner finds willful misconduct or a willful violation, an administrative
30 penalty of up to \$3,500.

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

33 (e) If a navigator or nonnavigator assister registered under this article enters a plea of
34 guilty or nolo contendere, or is convicted by a court of a violation of this code or a felony, the
35 registration of such individual shall be immediately revoked by the commissioner. The individual
36 may subsequently request a hearing pursuant to section thirteen, article two of this chapter, which
37 shall be expedited by the commissioner. The sole issue at the hearing shall be whether the
38 revocation of registration should be rescinded because such individual was not in fact convicted
39 of a violation of this code or a felony.

40 (f) An order by the commissioner suspending the registration of a navigator or
41 nonnavigator assister must specify the period during which the suspension is to be in effect, which
42 may not exceed two years. The registration shall remain suspended during the period specified,
43 subject to rescission or modification of the order by the commissioner, or modification or reversal
44 by the court, before expiration of the suspension period. A registration that has been suspended
45 may not be reinstated except upon the filing and approval of an application for reinstatement;
46 however, the commissioner may not approve an application for reinstatement if it finds that the
47 circumstance or circumstances for which the registration was suspended still exist or are likely to
48 recur. An application for reinstatement is also subject to disqualification and waiting periods
49 before approval on the same grounds that apply to applications for registration under section four
50 of this article.

51 (g) An individual whose registration has been revoked may not apply for registration as a

52 navigator or nonnavigator assister until two years after the effective date of such revocation or, if
53 judicial review of such revocation is sought, within two years after the date of the final court order
54 or decree affirming the revocation.

55 (h) Revocation or suspension of the registration of a navigator or nonnavigator assister
56 under this article shall be immediately reported by the commissioner to the operator of the
57 exchange. An individual whose registration has been revoked or suspended may not act as,
58 offer to act as, or advertise any service as a navigator or nonnavigator assister until the
59 commissioner reinstates such registration.

60 (i) The commissioner may propose rules for legislative approval in accordance with the
61 provisions of article three, chapter twenty-nine-a of this code establishing specific penalties
62 against registrants in accordance with this section. The purpose of revocation or suspension is
63 to provide a sufficient penalty to deter behavior incompatible with the public health, safety, and
64 welfare. The imposition of a revocation or the duration of a suspension shall be based on the
65 type of conduct and the likelihood that the propensity to commit further illegal conduct has been
66 overcome at the time of eligibility for reinstatement. The length of suspension may be adjusted
67 based on aggravating or mitigating factors established by rule and consistent with this purpose.

§33-12D-8. Rulemaking.

1 The commissioner may propose rules for legislative approval in accordance with the
2 provisions of article three, chapter 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.