

1 **H. B. 4564**

2  
3 (By Delegates Frich, Ellington, Householder,  
4 Howell, Border, Walters, Cowles, Sobonya,  
5 Shott, Faircloth and Westfall)  
6

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

**FISCAL  
NOTE**

10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §33-16I-1, §33-16I-2,  
12 §33-16I-3, §33-16I-4 and §33-16I-5, all relating to the  
13 protection and privacy of persons seeking health insurance  
14 assisted by navigators and nonnavigator assisters under the  
15 federal Affordable Care Act; definitions; requirements and  
16 qualifications for navigators and nonnavigator assisters;  
17 certification by the Insurance Commissioner of navigators and  
18 nonnavigator assisters meeting the requirements and  
19 qualifications; establishing a criminal felony offense for  
20 certain acts of misuse or disclosure of personally  
21 identifiable information by navigators and nonnavigator  
22 assisters; criminal penalties upon conviction; establishing  
23 misdemeanor criminal offenses for violation of the article and  
24 providing criminal penalties upon conviction thereof;  
25 providing for injunctive relief to enforce the provisions of

1 the article; and providing for the institution of criminal  
2 proceedings.

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

4 That the Code of West Virginia, 1931, as amended, be amended  
5 by adding thereto a new article, designated §33-16I-1, §33-16I-2,  
6 §33-16I-3, §33-16I-4 and §33-16I-5, all to read as follows:

7 **ARTICLE 16I. PROTECTION OF PRIVACY AND SECURITY OF PERSONS SEEKING**  
8 **HEALTH INSURANCE ASSISTED BY NAVIGATORS OR**  
9 **NONNAVIGATION ASSISTERS UNDER THE FEDERAL**  
10 **AFFORDABLE CARE ACT.**

11 **§33-16I-1. Definitions.**

12 As used in the article:

13 (1) "Affordable Care Act" means the federal Patient Protection  
14 and Affordable Care Act (P.L. 111-148), as amended by the federal  
15 Health Care and Education Reconciliation Act of 2010 (P.L. 111-  
16 152).

17 (2) "Agent or broker" means a person or entity licensed by the  
18 commissioner as an agent, broker or insurance producer licensed to  
19 sell or broker health insurance in this state.

20 (3) "Applicant" means an individual who is seeking eligibility  
21 for him or herself through an application submitted to an exchange  
22 or transmitted to the exchange by an agency administering an  
23 insurance affordability program for at least one of the following:

1 (A) Enrollment in a Qualified Health Plan through the  
2 exchange; or

3 (B) Medicaid or Children's Health Insurance Program, if  
4 applicable.

5 (4) "Federally-facilitated exchange" means an exchange  
6 established and operated within the state by the Secretary of the  
7 United States Department of Health and Human Services under  
8 authority of the Affordable Care Act.

9 (5) "Application filer" means an applicant, an adult who is in  
10 the applicant's household or family, an authorized representative  
11 of an applicant, or, if the applicant is a minor or incapacitated,  
12 someone acting responsibly for an applicant.

13 (6) "Exchange" means an American health benefit exchange  
14 operating in West Virginia under authority of the Affordable Care  
15 Act, including, but not limited to, a federally facilitated  
16 exchange, a governmental agency or nonprofit entity that is acting  
17 as a health insurance exchange under the Affordable Care Act and  
18 makes qualified health plans available to individuals or employers  
19 qualified under the Affordable Care Act, an exchange serving the  
20 individual market for individuals and employers qualified to obtain  
21 qualified health plans, regardless of whether the exchange is  
22 established and operated by the State of West Virginia, including  
23 a regional exchange or subsidiary exchange, or by the United States  
24 Department of Health and Human Services.

1       (7) "Issuer application assister" means an employee,  
2 contractor or agent of a qualified health plan issuer who is not  
3 licensed as an agent, broker, or producer by the commissioner and  
4 who assists individuals in the individual market with applying for  
5 a determination or redetermination of eligibility for coverage  
6 through the exchange or for insurance affordability programs.

7       (8) "Navigator" means a public or private entity or  
8 individual authorized by an exchange to serve as a navigator, or  
9 who works on behalf of an entity authorized by an exchange to serve  
10 as a navigator, pursuant to 42 U.S.C. 18031(i) (1), who facilitates  
11 the selection of a qualified health plan through the exchange and  
12 performs any other duties specified under 42 U.S.C. 18031(i) (3), a  
13 private or public entity or individual that is qualified, and  
14 licensed, if appropriate, to engage in the activities and meet the  
15 standards described in 45 CFR §155.210.

16       (9) "Nonnavigator assister" means a person or organization  
17 authorized to assist persons to enroll in a qualified health plan  
18 and understand the health insurance exchange under 45 CFR §  
19 155.205(d) and (e), and includes issuer application assisters, but  
20 does not include an agent or broker.

21       (10) "Personally identifiable information" means information  
22 that can be used on its own or with other information to identify,  
23 contact, or locate an individual person, or to identify an  
24 individual in context; information from which a person's identity

1 is reasonably ascertainable; any information about an individual  
2 obtained or maintained by a navigator or a nonnavigator assister,  
3 including any information that can be used to distinguish or trace  
4 an individual's identity, such as name, social security number,  
5 date and place of birth, mother's maiden name, or biometric  
6 records; and any other information that is linked or linkable to an  
7 individual, such as medical, educational, financial, employment and  
8 any other personal information about the individual.

9 (11) "Qualified health plan" means a health plan that meets  
10 the standards of the Affordable Care Act and issued or offered by  
11 an exchange or other qualified entity.

12 **§33-16I-2. Requirements and qualifications for navigators and**  
13 **nonnavigator assisters; certification by the**  
14 **commissioner.**

15 (a) No person may serve as a navigator or nonnavigator  
16 assister in this state that does not meet the following  
17 requirements:

18 (1) Has not been convicted of any of the following offenses:

19 (A) A felony in the first degree, a capitol felony so  
20 designated by the laws of this state or in the jurisdiction in  
21 which the judgment of conviction was entered, including:

22 (i) Treason under section one, article one, chapter sixty-one  
23 of this code;

24 (ii) The crime of murder under sections one, two and three,

1 article two, chapter sixty-one of this code;

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

5 (iv) The crime of kidnapping under section fourteen-a, article  
6 two, chapter sixty-one of this code;

7 (v) The crime of first degree arson under section one, article  
8 three, chapter sixty-one of this code;

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

11 (vii) Any felony designated as a "felony of the first degree"  
12 or a "capital felony" in the jurisdiction in which the plea is  
13 entered or judgment is rendered.

14 (B) A felony involving money laundering, fraud or  
15 embezzlement; or

16 (C) A felony directly related to the financial services  
17 industry.

18 (2) Is a natural person at least eighteen years of age;

19 (3) Is a United States citizen or legal alien who possesses  
20 work authorization from the United States Bureau of Citizenship and  
21 Immigration Services;

22 (4) Has successfully completed all training for a navigator or  
23 nonnavigator assister as required by the federal government or the  
24 exchange;

1       (5) Meets all requirements of the Affordable Care Act  
2 necessary to qualify to act as a navigator or nonnavigator  
3 assister;

4       (6) Has submitted, at his or her own expense, to a state and  
5 national criminal record history check based on fingerprints  
6 submitted to the West Virginia State Police or its assigned agent  
7 for forwarding to the Federal Bureau of Investigation and shall  
8 meet all requirements necessary to accomplish the state and  
9 national criminal record history check, including:

10       (A) Submitting fingerprints for the purposes set forth in this  
11 subsection; and

12       (B) Authorizing the commissioner, the West Virginia State  
13 Police and the Federal Bureau of Investigation to use all records  
14 submitted and produced for the purpose of determining that the  
15 person meets the requirements of this section; and

16       (7) Has been certified by the commissioner as meeting all  
17 requirements in this section.

18       (b) No person may act or perform services in this state as a  
19 navigator or a nonnavigator assister until the person is certified  
20 by the commissioner as meeting all of the requirements in this  
21 section.

22       (c) (1) The results of the state and national criminal history  
23 record check required in this section may not be released to or by  
24 a private entity except:

1 (A) To the individual who is the subject of the criminal  
2 history record check;

3 (B) With the written authorization of the individual who is  
4 the subject of the criminal history record check; or

5 (C) Pursuant to a court order.

6 (2) The criminal history record check and related records are  
7 not public records for the purposes of chapter twenty-nine-b of  
8 this code.

9 (3) The commissioner shall promulgate emergency rules pursuant  
10 to the provisions of section fifteen, article three, chapter  
11 twenty-nine-a of this code which shall set forth the requirements  
12 and procedures for the criminal history check and must be  
13 consistent with standards established by the Federal Bureau of  
14 Investigation and the National Crime Prevention and Privacy Compact  
15 as authorized by 42 U. S. C. A. §14611, et seq.

16 **§33-16I-3. Unlawful acts relating to personally identifiable**  
17 **information; penalties for violation.**

18 (a) Except as permissible pursuant to the Affordable Care Act,  
19 it is unlawful for a navigator, a nonnavigator assister or a  
20 qualified health plan issuer to knowingly or intentionally  
21 distribute, deliver, disclose or possess with intent to distribute,  
22 deliver or disclose to another person, personally identifiable  
23 information obtained from an applicant or an application filer or  
24 obtained from records or data in the possession of, or accessible



1 to, an exchange, except as allowable or required by law.

2 (b) Any person who violates the provisions of this section is  
3 guilty of a felony and, upon conviction thereof, shall be fined not  
4 more than \$10,000 or imprisoned in a state correctional facility  
5 for not less than one nor more than fifteen years, or both fined  
6 and imprisoned.

7 (c) In addition to the penalties herein provided, if any  
8 person receives compensation for acts or services performed in  
9 violation of this section, he or she shall also be subject to a  
10 civil penalty of not less than the value of the compensation  
11 received nor more than three times the value of the compensation  
12 received, as may be determined by a court of competent  
13 jurisdiction. Any penalty may be recovered by a person aggrieved  
14 as a result of a violation of this section.

15 **§33-16I-4. Penalties for violations.**

16 (a) Any person violating a provision of this article for which  
17 there is no other criminal penalty specifically provided is guilty  
18 of a misdemeanor. Any person convicted of a first violation shall  
19 be fined not less than \$1,000 nor more than \$2,000, or confined in  
20 jail not more than ninety days, or both fined and confined.

21 (b) Any person convicted of a second or subsequent violation  
22 shall be fined not less than \$2,000 nor more than \$5,000, or  
23 confined in jail for a term not to exceed one year, or both fined  
24 and confined.

1       (c) Any corporation, association, partnership or other entity  
2 convicted of a first violation of this article shall be fined not  
3 less than \$2,000 nor more than \$5,000.

4       (d) Any corporation, association, partnership or other entity  
5 convicted of a second or subsequent violation, shall be fined not  
6 less than \$5,000 nor more than \$10,000.

7       (e) Any officer, member, employee or agent of a corporation,  
8 association, partnership or other entity, shall be subject to the  
9 penalties herein prescribed for individuals.

10       (f) Each and every day a violation of this article continues  
11 shall constitute a separate offense.

12       (g) The penalties provided in this section do not apply to a  
13 violation of the duties or obligations of a financial institution  
14 under the certification required by subdivision (7), subsection  
15 (j), section eighteen of this article by a financial institution  
16 providing trust fund account services to a broker.

17 **§33-16I-5. Injunctions; criminal proceedings.**

18       (a) Whenever the commissioner or other interested person  
19 believes that any person has engaged, is engaging or is about to  
20 engage in any act that constitutes a violation of this article, the  
21 commissioner or other interested person may make application to any  
22 court of competent jurisdiction for an order enjoining the acts or  
23 services. Upon a showing that the person has engaged in or is  
24 about to engage in any act which violates this article, an

1 injunction, restraining order or another appropriate order may be  
2 granted by the court without bond.

3 (b) Whenever the commissioner or other interested person has  
4 reason to believe that any person has knowingly violated a  
5 provision of this article, the commissioner or other interested  
6 person may bring its information to the prosecuting attorney in the  
7 county where the violation has occurred who shall cause appropriate  
8 criminal proceedings to be brought.

9 (c) Whenever any other interested person has reason to believe  
10 that any person has knowingly violated a provision of this article,  
11 such person may bring its information to the attention of the  
12 appropriate law-enforcement officer who may cause an investigation  
13 to be made in order for appropriate criminal proceedings to be  
14 brought.

NOTE: The purpose of this bill is to provide for the protection and privacy of persons seeking health insurance assisted by navigators and nonnavigator assisters under the federal Affordable Care Act. The bill provides the following: definitions; requirements and qualifications for navigators and nonnavigator assisters; certification by the Insurance Commissioner; establishing a criminal felony offense for certain acts of misuse or disclosure of personally identifiable information by navigators and nonnavigator assisters; criminal penalties upon conviction; establishing misdemeanor criminal offenses for violation of the article and providing criminal penalties upon conviction thereof; providing for injunctive relief to enforce the provisions of the article; and providing for the institution of criminal proceedings.

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