

Senate Bill No. 564

(By Senators Jenkins, Barnes, Blair, Boley, Carmichael, Cole, M.
Hall, Miller, Sypolt, Walters and Nohe)

[Introduced February 13, 2014; referred to the Committee on
Banking and Insurance; then to the Committee on Health and Human
Resources; and then to the Committee on 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 the registration of health insurance
exchange navigators and nonnavigator assisters operating
pursuant to the Patient Protection and Affordable Care Act;
providing protection against consumer identity theft by health
insurance exchange navigators and nonnavigator assistants;
setting forth purpose; requiring applications and
registrations; setting forth application requirements and
registration qualifications; permitting a fee; setting forth
who is prohibited from applying; setting forth
disqualification periods; establishing a registered navigator
and nonnavigator assister list; providing for a notice of

1 change of registrant information; setting forth prohibited
2 conduct; permitting registrations to be denied, revoked or
3 suspended; permitting hearings; establishing fines and
4 penalties; defining terms; and providing rule-making
5 authority.

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

7 That the Code of West Virginia, 1931, as amended, be amended
8 by adding thereto a new article, designated §33-12D-1, §33-12D-2,
9 §33-12D-3, §33-12D-4, §33-12D-5, §33-12D-6, §33-12D-7 and §33-12D-
10 8, all to read as follows:

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

13 **§33-12D-1. Definitions.**

14 For the purposes of this article:

15 "Commissioner" means the West Virginia Insurance Commissioner.

16 "Exchange" means an American health benefit exchange operating
17 in West Virginia under the federal Patient Protection and
18 Affordable Care Act, as amended by the federal Health Care and
19 Education Reconciliation Act of 2010 (P.L. 111-152).

20 "Navigator" means an individual authorized by an exchange to
21 serve as a navigator, or who works on behalf of an entity
22 authorized by an exchange to serve as a navigator, pursuant to 42
23 U.S.C. §18031(i)(1), who facilitates the selection of a qualified

1 health plan through the exchange and performs any other duties
2 specified under 42 U.S.C. §18031(i)(3).

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

6 "PPACA" means the federal Patient Protection and Affordable
7 Care Act (P.L. 111-148), as amended by the federal Health Care and
8 Education Reconciliation Act of 2010 (P.L. 111-152).

9 **§33-12D-2. Registration required; purpose.**

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

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

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

23 **§33-12D-3. Qualifications for registration; application**

1 **requirements; fee; background check.**

2 (a) The commissioner shall not approve the registration of an
3 individual as a navigator or nonnavigator assister who:

4 (1) Is not a natural person at least eighteen years of age;

5 (2) Is not a United States citizen or legal alien who
6 possesses work authorization from the United States Bureau of
7 Citizenship and Immigration Services; or

8 (3) Who has not successfully completed all training for a
9 navigator or nonnavigator assister as required by the federal
10 government or the exchange.

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

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

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

23 (2) A statement of acknowledgment of conduct that is

1 prohibited under this article and the penalties associated with
2 such conduct.

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

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

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

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

22 (f) In addition to information requested in the application,
23 the commissioner may propound any reasonable interrogatories to an

1 applicant relating to the applicant's qualifications, residence,
2 prospective place of business, and any other matters that, in the
3 opinion of the commissioner, are deemed necessary or advisable for
4 the protection of the public and to ascertain the applicant's
5 qualifications. In addition to the submission of fingerprints for
6 criminal background screening, the commissioner may make such
7 further investigations as he or she may deem advisable of the
8 applicant's character, experience, background, and fitness for
9 registration as specified under this article.

10 **§33-12D-4. Prohibited applications; disqualification periods;**
11 **rule-making.**

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

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

16 (2) The crime of murder under sections one, two and three,
17 article two of that chapter;

18 (3) The crime of robbery involving the use or presenting of
19 firearms or other deadly weapons under section twelve of that
20 article;

21 (4) The crime of kidnapping under section fourteen-a of that
22 article;

23 (5) The crime of first degree arson under section one, article

1 three of that chapter;

2 (6) The crime of sexual assault in the first degree under
3 section three, article eight-b of that chapter; and

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

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

14 (c) For all other crimes not described in subsection (b) of
15 this section, the commissioner may adopt rules establishing the
16 process and application of disqualifying periods including:

17 (1) A ten-year disqualifying period for all felonies involving
18 moral turpitude which are not specifically included in subsection
19 (b).

20 (2) A five-year disqualifying period for all felonies not
21 specifically included in subdivision (1) of this subsection or
22 subsection (a) of this section.

23 (3) A five-year disqualifying period for all misdemeanors

1 directly related to the financial services business.

2 (d) The commissioner may adopt rules providing additional
3 disqualifying periods due to the commitment of multiple crimes and
4 other factors reasonably related to the applicant's criminal
5 history. The rules must provide for mitigating and aggravating
6 factors and should also implement policies to mitigate or eliminate
7 the risk of violations of federal or state consumer privacy laws.
8 However, mitigation may not result in a disqualifying period of
9 less than five years and may not mitigate the disqualifying periods
10 in subdivision (2) or (3), subsection (c) of this section.

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

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

21 **§33-12D-5. Registered navigator and nonnavigator assister list.**

22 Upon approval of an application for registration under this
23 article, the commissioner shall add the name of the registrant to

1 its publicly available list of registered navigators and
2 nonnavigator assisters in order for operators of an exchange and
3 other interested parties to validate a navigator's or nonnavigator
4 assister's registration.

5 **§33-12D-6. Notice of change of registrant information; fines.**

6 A navigator or nonnavigator assister must notify the
7 commissioner, in writing, within thirty days after a change of
8 name, residence address, principal business street address, mailing
9 address, contact telephone number, or e-mail address. Failure to
10 notify the commissioner within the required time is subject to a
11 fine of up to \$250 for the first offense, and a fine of at least
12 \$500 or suspension or revocation for a subsequent offense. The
13 commissioner may adopt rules to administer and enforce this
14 section.

15 **§33-12D-7. Conduct prohibited; denial, revocation, or suspension**
16 **of registration; rule-making; penalties.**

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

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

1 (1) Violation of this article or any applicable provision of
2 this chapter.

3 (2) Violation of an order or rule by the commissioner.

4 (3) Having been the subject of disciplinary or other adverse
5 action by the federal government or an exchange as a result of a
6 violation of any provision of PPACA.

7 (4) Lack of one or more of the qualifications required under
8 this article.

9 (5) Material misstatement, misrepresentation, or fraud in
10 obtaining or attempting to obtain registration under this article.

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

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

20 (8) Failure to inform the commissioner in writing within
21 thirty days after pleading guilty or nolo contendere to, or being
22 convicted or found guilty of, any felony or crime punishable by
23 imprisonment of one or more years under the law of the United

1 States or of any state thereof, or under the law of any other
2 country without regard to whether a judgment of conviction has been
3 entered by the court having jurisdiction of the case.

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

6 (10) If the commissioner finds that one or more grounds exist
7 for the suspension or revocation of a navigator's or nonnavigator
8 assister's registration, the commissioner may, in lieu of or in
9 addition to suspension or revocation, impose upon the registrant an
10 administrative penalty of up to \$500, or if the commissioner finds
11 willful misconduct or a willful violation, an administrative
12 penalty of up to \$3,500.

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

16 (12) If a navigator or nonnavigator assister registered under
17 this article enters a plea of guilty or nolo contendere, or is
18 convicted by a court of a violation of this code or a felony, the
19 registration of such individual shall be immediately revoked by the
20 commissioner. The individual may subsequently request a hearing
21 pursuant to section thirteen, article two of this chapter, which
22 shall be expedited by the commissioner. The sole issue at the
23 hearing shall be whether the revocation of registration should be

1 rescinded because such individual was not in fact convicted of a
2 violation of this code or a felony.

3 (13) An order by the commissioner suspending the registration
4 of a navigator or nonnavigator assister must specify the period
5 during which the suspension is to be in effect, which may not
6 exceed two years. The registration shall remain suspended during
7 the period specified, subject to rescission or modification of the
8 order by the commissioner, or modification or reversal by the
9 court, before expiration of the suspension period. A registration
10 that has been suspended may not be reinstated except upon the
11 filing and approval of an application for reinstatement; however,
12 the commissioner may not approve an application for reinstatement
13 if he or she finds that the circumstance or circumstances for which
14 the registration was suspended still exist or are likely to recur.
15 An application for reinstatement is also subject to
16 disqualification and waiting periods before approval on the same
17 grounds that apply to applications for registration under section
18 four of this article.

19 (14) An individual whose registration has been revoked may not
20 apply for registration as a navigator or nonnavigator assister
21 until two years after the effective date of such revocation or, if
22 judicial review of such revocation is sought, within two years
23 after the date of the final court order or decree affirming the

1 revocation.

2 (15) Revocation or suspension of the registration of a
3 navigator or nonnavigator assister under this article shall be
4 immediately reported by the commissioner to the operator of the
5 exchange. An individual whose registration has been revoked or
6 suspended may not act as, offer to act as, or advertise any service
7 as a navigator or nonnavigator assister until the commissioner
8 reinstates such registration.

9 (16) The commissioner may adopt rules establishing specific
10 penalties against registrants in accordance with this section. The
11 purpose of revocation or suspension is to provide a sufficient
12 penalty to deter behavior incompatible with the public health,
13 safety, and welfare. The imposition of a revocation or the
14 duration of a suspension shall be based on the type of conduct and
15 the likelihood that the propensity to commit further illegal
16 conduct has been overcome at the time of eligibility for
17 reinstatement. The length of suspension may be adjusted based on
18 aggravating or mitigating factors established by rule and
19 consistent with this purpose.

20 **§33-12D-8. Rule-making.**

21 The commissioner may promulgate legislative rules pursuant to
22 article three, chapter twenty-nine-a of this code to implement the
23 requirements of this article.

NOTE: The purpose of this bill is to provide for the registration of health insurance exchange navigators and nonnavigator assisters operating pursuant to the Patient Protection and Affordable Care Act. The bill provides protection against consumer identity theft by health insurance exchange navigators and nonnavigator assistants. The bill sets forth purpose. The bill requires applications and registrations. The bill sets forth application requirements and registration qualifications. The bill permits a fee. The bill sets forth who is prohibited from applying. The bill sets forth disqualification periods. The bill establishes a registered navigator and nonnavigator assister list. The bill provides for a notice of change of registrant information. The bill sets forth prohibited conduct. The bill permits registrations to be denied, revoked or suspended. The bill permits hearings. The bill establishes fines and penalties. The bill defines terms. The bill provides rule-making authority.

This article is new; therefore, strike-throughs and underscoring have been omitted.