

H. B. 2660

(By Delegates Frich, Walters and Butler, Householder, Arvon,
Howell, Ellington, Summers, Rohrbach, Waxman and Westfall)

[Introduced February 9, 2015; 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 certain prohibited conduct; promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

1 article, designated §33-12D-1, §33-12D-2, §33-12D-3, §33-12D-4, §33-12D-5, §33-12D-6,
2 §33-12D-7 and §33-12D-8, all to read as follows:

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

6 **§33-12D-1. Definitions.**

7 For the purposes of this article:

8 (1) "Affordable Care Act" means the federal Patient Protection and Affordable Care Act (P.L.
9 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L.
10 111-152).

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

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

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

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

20 **§33-12D-2. Registration required; purpose.**

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

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

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

8 **§33-12D-3. Qualifications for registration; application required.**

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

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

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

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

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

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

22 (1) His or her full name, age, residence address, business address, mailing address, contact

1 telephone numbers, including a business telephone number if applicable, and e-mail address.

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

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

6 (4) Such additional information as the commissioner may deem proper to enable him or her
7 to determine the character, experience, 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 nonrefundable application fee
10 established by the commissioner in an amount expected to generate revenue sufficient to cover the
11 costs incurred by the commissioner in implementing this article.

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

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

1 commissioner may make such further investigations as he or she may deem advisable of the
2 applicant's character, experience, background, and fitness for registration as specified under this
3 article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Upon approval of an application for registration under this article, the commissioner shall

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

4 **§33-12D-6. Notice of change of registrant information.**

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

10 **§33-12D-7. Conduct prohibited; denial, revocation, or suspension of registration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (e) If a navigator or nonnavigator assister registered under this article enters a plea of guilty
22 or nolo contendere, or is convicted by a court of a violation of this code or a felony, the registration

1 of such individual shall be immediately revoked by the commissioner. The individual may
2 subsequently request a hearing pursuant to section thirteen, article two of this chapter, which shall
3 be expedited by the commissioner. The sole issue at the hearing shall be whether the revocation of
4 registration should be rescinded because such individual was not in fact convicted of a violation of
5 this code or a felony.

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

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

20 (h) Revocation or suspension of the registration of a navigator or nonnavigator assister under
21 this article shall be immediately reported by the commissioner to the operator of the exchange. An
22 individual whose registration has been revoked or suspended may not act as, offer to act as, or

1 advertise any service as a navigator or nonnavigator assister until the commissioner reinstates such
2 registration.

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

11 **§33-12D-8. Rulemaking.**

12 The commissioner may propose rules for legislative approval in accordance with the
13 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.