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H. B. 2661

(By Delegates Frich, Walters, Householder, Ellington, Rohrbach,
Waxman, Faircloth, Westfall, Shott, Fast and Deem)

[Introduced February 9, 2015; referred to the
Committee on Health and Human Resources then the Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16I-1, §33-16I-2, §33-16I-3, §33-16I-4 and §33-16I-5, all relating to the protection and privacy of persons seeking health insurance assisted by navigators and nonnavigator assisters under the federal Affordable Care Act; definitions; requirements and qualifications for navigators and nonnavigator assisters; certification by the Insurance Commissioner of navigators and nonnavigator assisters meeting the requirements and qualifications; 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.

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 §33-16I-1, §33-16I-2, §33-16I-3, §33-16I-4 and §33-16I-5, all to read as follows:

2 **ARTICLE 16I. PROTECTION OF PRIVACY AND SECURITY OF PERSONS SEEKING**
3 **HEALTH INSURANCE ASSISTED BY NAVIGATORS OR**
4 **NONNAVIGATION ASSISTERS UNDER THE FEDERAL**
5 **AFFORDABLE CARE ACT.**

6 **§33-16I-1. Definitions.**

7 As used in the 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) "Agent or broker" means a person or entity licensed by the commissioner as an agent,
12 broker or insurance producer licensed to sell or broker health insurance in this state.

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

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

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

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

21 (5) "Application filer" means an applicant, an adult who is in the applicant's household or
22 family, an authorized representative of an applicant, or, if the applicant is a minor or incapacitated,

1 someone acting responsibly for an applicant.

2 (6) "Exchange" means an American health benefit exchange operating in West Virginia
3 under authority of the Affordable Care Act, including, but not limited to, a federally facilitated
4 exchange, a governmental agency or nonprofit entity that is acting as a health insurance exchange
5 under the Affordable Care Act and makes qualified health plans available to individuals or
6 employers qualified under the Affordable Care Act, an exchange serving the individual market for
7 individuals and employers qualified to obtain qualified health plans, regardless of whether the
8 exchange is established and operated by the State of West Virginia, including a regional exchange
9 or subsidiary exchange, or by the United States Department of Health and Human Services.

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

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

20 (9) "Nonnavigator assister" means a person or organization authorized to assist persons to
21 enroll in a qualified health plan and understand the health insurance exchange under 45 CFR §
22 155.205(d) and (e), and includes issuer application assisters, but does not include an agent or broker.

1 (10) “Personally identifiable information” means information that can be used on its own or
2 with other information to identify, contact, or locate an individual person, or to identify an individual
3 in context; information from which a person's identity is reasonably ascertainable; any information
4 about an individual obtained or maintained by a navigator or a nonnavigator assister, including any
5 information that can be used to distinguish or trace an individual’s identity, such as name, social
6 security number, date and place of birth, mother’s maiden name, or biometric records; and any other
7 information that is linked or linkable to an individual, such as medical, educational, financial,
8 employment and any other personal information about the individual.

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

11 **§33-16I-2. Requirements and qualifications for navigators and nonnavigator assisters;**
12 **certification by the commissioner.**

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

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

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

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

19 (ii) The crime of murder under sections one, two and three, article two, chapter sixty-one of
20 this code;

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

- 1 (iv) The crime of kidnaping under section fourteen-a, article two, chapter sixty-one of this
2 code;
- 3 (v) The crime of first degree arson under section one, article three, chapter sixty-one of this
4 code;
- 5 (vi) The crime of sexual assault in the first degree under section three, article eight-b, chapter
6 sixty-one of this code; and
- 7 (vii) Any felony designated as a “felony of the first degree” or a “capital felony” in the
8 jurisdiction in which the plea is entered or judgment is rendered.
- 9 (B) A felony involving money laundering, fraud or embezzlement; or
- 10 (C) A felony directly related to the financial services industry.
- 11 (2) Is a natural person at least eighteen years of age;
- 12 (3) Is a United States citizen or legal alien who possesses work authorization from the United
13 States Bureau of Citizenship and Immigration Services;
- 14 (4) Has successfully completed all training for a navigator or nonnavigator assister as
15 required by the federal government or the exchange;
- 16 (5) Meets all requirements of the Affordable Care Act necessary to qualify to act as a
17 navigator or nonnavigator assister;
- 18 (6) Has submitted, at his or her own expense, to a state and national criminal record history
19 check based on fingerprints submitted to the West Virginia State Police or its assigned agent for
20 forwarding to the federal Bureau of Investigation and shall meet all requirements necessary to
21 accomplish the state and national criminal record history check, including:
- 22 (A) Submitting fingerprints for the purposes set forth in this subsection; and

1 (B) Authorizing the commissioner, the West Virginia State Police and the federal Bureau of
2 Investigation to use all records submitted and produced for the purpose of determining that the
3 person meets the requirements of this section; and

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

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

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

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

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

13 (C) Pursuant to a court order.

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

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

21 **§33-16I-3. Unlawful acts relating to personally identifiable information; penalties for**
22 **violation.**

1 (a) Except as permissible pursuant to the Affordable Care Act, it is unlawful for a navigator,
2 a nonnavigator assister or a qualified health plan issuer to knowingly or intentionally distribute,
3 deliver, disclose or possess with intent to distribute, deliver or disclose to another person, personally
4 identifiable information obtained from an applicant or an application filer or obtained from records
5 or data in the possession of, or accessible to, an exchange, except as allowable or required by law.

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

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

14 **§33-16I-4. Penalties for violations.**

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

19 (b) Any person convicted of a second or subsequent violation shall be fined not less than
20 \$2,000 nor more than \$5,000, or confined in jail for a term not to exceed one year, or both fined and
21 confined.

22 (c) Any corporation, association, partnership or other entity convicted of a first violation of

1 this article shall be fined not less than \$2,000 nor more than \$5,000.

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

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

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

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

11 **§33-16I-5. Injunctions; criminal proceedings.**

12 (a) Whenever the commissioner or other interested person believes that any person has
13 engaged, is engaging or is about to engage in any act that constitutes a violation of this article, the
14 commissioner or other interested person may make application to any court of competent jurisdiction
15 for an order enjoining the acts or services. Upon a showing that the person has engaged in or is
16 about to engage in any act which violates this article, an injunction, restraining order or another
17 appropriate order may be granted by the court without bond.

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

22 (c) Whenever any other interested person has reason to believe that any person has knowingly

- 1 violated a provision of this article, such person may bring its information to the attention of the
- 2 appropriate law-enforcement officer who may cause an investigation to be made in order for
- 3 appropriate criminal proceedings to be 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.