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SENATE BILL NO. 1261

Offered January 11, 2013

A *BILL to amend the Code of Virginia by adding in Chapter 34 of Title 38.2 an article numbered 7, consisting of sections numbered 38.2-3447 through 38.2-3454, relating to accident and sickness insurance; health benefit exchange navigators.*

Patron—Puckett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 34 of Title 38.2 an article numbered 7, consisting of sections numbered 38.2-3447 through 38.2-3454, as follows:

*Article 7.**Navigators.***§ 38.2-3447. Definitions.**

As used in this article, unless the context requires otherwise:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Exchange" means a health benefit exchange established or operated in the Commonwealth, including a health benefit exchange established or operated by the U.S. Secretary of Health and Human Services, pursuant to § 1311(b) of the Affordable Care Act.

"Navigator" means a person selected to perform the activities and duties identified in 42 U.S.C. 18031(i) in the Commonwealth.

§ 38.2-3448. License required; criteria for licensure.

A. No individual or entity shall act as or hold himself or itself out to be a navigator in the Commonwealth, or receive navigator funding from the Commonwealth or an exchange, unless licensed as a navigator by the Commission under this article.

B. A navigator may not:

1. Engage in any activities that would require an insurance agent or producer license under this title;

2. Provide advice concerning the benefits, terms, and features of a particular health plan or offer advice about which health plan is better or worse for a particular individual or employer;

3. Make recommendations to consumers, purchasers, enrollees, or employers or to prospective consumers, purchasers, or enrollees concerning the substantive benefits, terms, or conditions of health plans; or

4. Enroll an individual or employee in a qualified health plan offered through an exchange or act as an intermediary between an employer and an insurer that offers a qualified health plan offered through an exchange.

C. Prior to any exchange becoming operational in the Commonwealth, the Commission shall:

1. Develop criteria for use by any exchange for the selection of a navigator pursuant to § 1311(i) of the Affordable Care Act and any applicable law of the Commonwealth;

2. Adopt rules to establish a certification and training program for a prospective individual navigator that includes initial and continuing education requirements and an examination; and

3. Adopt rules, to the extent permitted by the Affordable Care Act, that require a navigator to carry and maintain errors and omissions insurance to cover all activities contemplated or performed pursuant to this article and § 1311(i) of the federal Affordable Care Act.

§ 38.2-3449. Application for license.

A. A person applying for a navigator license shall make application to the Commission on a form and containing the information prescribed by the Commission and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the Commission shall find that the individual:

1. Is at least 18 years of age;

2. Resides in the Commonwealth or maintains his principal place of business in the Commonwealth;

3. Is not disqualified for having committed any act that would be a ground for denial, suspension, or revocation of an insurance agent license under § 38.2-1831;

4. Has completed the pre-licensing training and course of study prescribed by the Commission;

5. Has successfully passed the examination prescribed by the Commission;

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59 6. Has submitted a full set of fingerprints to the Commission and successfully completed a criminal
60 history and regulatory record check in a manner prescribed by the Commission;

61 7. When applicable, has the written consent of the Commission pursuant to 18 U.S.C. § 1033, or any
62 successor statute regulating crimes by or affecting persons engaged in the business of insurance whose
63 activities affect interstate commerce;

64 8. Possesses the requisite character and integrity;

65 9. Has identified the entity with which he or it is affiliated and supervised; and

66 10. Has paid the fees prescribed by the Commission.

67 B. An entity that acts as a navigator, supervises the activities of individual navigators, or receives
68 funding to perform such activities shall obtain an entity navigator license. An entity applying for an
69 entity navigator license shall make application on a form and containing the information prescribed by
70 the Commission.

71 C. The Commission may require any documents deemed necessary to verify the information contained
72 in an application submitted in accordance with subsections A and B.

73 D. Entities licensed as navigators shall, in a manner prescribed by the Commission, periodically
74 provide the Commission with a list of all individual navigators that it employs, supervises, or is
75 affiliated with.

76 E. The Commission shall require that each navigator obtain a surety bond in an amount acceptable
77 to the Commission or otherwise demonstrate a level of financial responsibility capable of protecting all
78 persons against the wrongful acts, misrepresentations, errors, omissions, or negligence of the navigator.
79 The Commission may ask for a copy of the bond or other evidence of financial responsibility at any
80 time.

81 F. Prior to any exchange becoming operational in the Commonwealth, the Commission shall
82 prescribe initial training, continuing education, and examination standards and requirements for
83 navigators.

84 **§ 38.2-3450. License renewal.**

85 A. A navigator license shall be valid for two years.

86 B. A navigator may file an application for renewal of a license in a method prescribed by the
87 Commission and pay the renewal fee prescribed by the Commission. Any navigator who fails to file
88 timely for license renewal shall be charged a late fee in an amount prescribed by the Commission.

89 C. An individual who holds a navigator license shall satisfactorily complete the continuing education
90 training required by this title, reported on a biennial basis in conjunction with his license renewal. Each
91 navigator shall submit to the Commission or its administrator proof of compliance with continuing
92 education requirements in the form and manner required by the Commission. Any navigator subject to
93 this article who fails to submit complete documentation, showing proof of compliance with continuing
94 education requirements, as well as all specified forms and nonrefundable fees, to the Commission or its
95 administrator shall be deemed to be in noncompliance with the requirements of this article. The license
96 of the navigator shall not be renewed if the navigator has failed to satisfy the continuing education
97 requirements of this title.

98 **§ 38.2-3451. Grounds for placing on probation, refusal to issue or renew, revocation or suspension**
99 **of license.**

100 A. The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on
101 probation, suspend, revoke, or refuse to issue, renew, or reinstate a navigator license for any one or
102 more of the causes listed in § 38.2-1831 or for other good cause.

103 B. The Commission shall have power to examine and investigate the business affairs of any
104 navigator to determine whether the individual or entity has engaged or is engaging in any violation of
105 this title. The Commission shall have the right to examine all records by any such person in the
106 Commonwealth to determine whether the person is now or has been violating any of the provisions of
107 this title. Any licensee under this article or any person purporting to be a licensee under this article or
108 any person whose actions have led any person to believe that he is a licensee under this article who
109 refuses to permit the Commission or any of its employees or agents, including employees of the Bureau
110 of Insurance, to make such examination or who fails or refuses to comply with the provisions of this
111 title may, after notice and an opportunity to be heard, be subject to any of the penalties relating to
112 licensees under this article, as provided in this title, including the denial, suspension, or revocation of
113 his license.

114 C. The navigator license held by an entity may be suspended or revoked, or renewal or reinstatement
115 thereof may be refused, or a fine may be levied with or without a suspension, revocation, or refusal to
116 renew a license, if the Commission finds that an individual licensee's violation was known or should
117 have been known by the employing or supervising entity and the violation was not reported to the
118 Commission and no corrective action was undertaken timely.

119 **§ 38.2-3452. Requirement to report to the Commission.**

120 A. Each licensed navigator convicted of a felony shall report within 30 calendar days to the

Commission the facts and circumstances regarding the criminal conviction.

B. Each licensed navigator shall report to the Commission within 30 calendar days of the final disposition of the matter any administrative action taken against him in another jurisdiction or by another governmental agency in the Commonwealth. Such report shall include a copy of the order, consent to order, or other relevant legal documents.

§ 38.2-3453. Other laws; rulemaking authority.

A. The requirements of this title, and any related rules, shall apply to navigators. For purposes of this title, the activities and duties of a navigator shall be deemed to constitute transacting the business of insurance.

B. The requirements of this title shall not apply to any individual or entity licensed as an insurance agent or producer in the Commonwealth.

C. Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and regulations as may be necessary or appropriate for the administration and enforcement of this article.

§ 38.2-3454. Individuals performing navigator duties.

If an organization or business entity serves as a navigator, an individual performing navigator duties for that organization or business entity is considered to be acting in the capacity of a navigator.