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HOUSE BILL NO. 136

Offered January 8, 2014

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A BILL to amend and reenact §§ 38.2-1866, 38.2-3455, and 38.2-3456 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457 through 38.2-3466, relating to regulation and licensure of navigators and other persons providing in-person assistance related to health insurance exchanges; prohibited conduct; penalties.

Patron—Marshall, R.G.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1866, 38.2-3455, and 38.2-3456 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457 through 38.2-3466 as follows:

§ 38.2-1866. Continuing education requirements.

A. Every individual resident and nonresident (i) insurance consultant, (ii) life and annuities insurance agent, (iii) health agent, (iv) property and casualty insurance agent (v) personal lines agent, and (vi) title insurance agent, and (vi) exchange assistor licensed pursuant to Article 7 (§ 38.2-3455 et seq.) of Chapter 34 shall, on a biennial basis, furnish evidence as set forth in this article that the continuing education requirements of this article have been satisfied. As used in this article, the term "agent" shall be construed to refer to any of the individual licensees referred to above.

B. Any agent who holds a life and annuities license or a health agent license, or both, shall complete 16 hours of relevant continuing education credits.

C. Any agent who holds a personal lines license or a property and casualty license shall complete 16 hours of relevant continuing education credits.

D. Any agent who holds a title agent license shall complete 16 hours of relevant continuing education credits.

E. Except as provided in subsection B and § 38.2-1871, any agent who holds licenses from more than one category of licenses identified in subsection A shall complete 24 hours of relevant continuing education credits with a minimum of eight credit hours in each such category.

F. Of the total required credits for each biennium, three credit hours shall be in insurance ethics, which may include insurance law and regulations applicable in Virginia.

G. Agents may receive no more than 75 percent of their required credits from courses provided by insurance companies or agencies. The Board, in its sole discretion, shall, at the time of course approval, determine whether any particular course shall be considered to be insurance company or agency sponsored, and shall require all course sponsors to provide this information clearly and conspicuously to all those enrolling in that course.

§ 38.2-3455. Definitions.

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

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

"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(e) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Exchange assistor" means (i) a navigator; (ii) an entity designated by the Secretary as a navigator's subgrantee or partner organization to assist or complement the work of the navigator within the Commonwealth; (iii) an individual employed by or volunteering with a navigator or a navigator's subgrantee or partner organization, if the individual performs within the Commonwealth any activity in furtherance of the duties identified in 42 U.S.C. § 1311(i)(3) or federal regulations adopted pursuant thereto; or (iv) an application counselor who is certified by a certified application counselor organization designated pursuant to 45 C.F.R. § 155.225(a) and who facilitates enrollment in qualified health plans or qualified dental plans within the Commonwealth. "Exchange assistor" does not include

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59 *an individual or entity licensed as an agent under Chapter 18 (§ 38.2-1800 et seq.) to sell, solicit, or*
60 *negotiate contracts of insurance or annuity in the Commonwealth.*

61 *"Federal act" means the federal Patient Protection and Affordable Care Act (P.L. 111-148), as*
62 *amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and*
63 *regulations or guidance issued under those acts.*

64 *"Navigator" means an individual or entity described in 42 U.S.C. § 1311(i)(2) that is selected to*
65 *perform the activities and duties identified in 42 U.S.C. § 18031(i) in the Commonwealth. "Navigator"*
66 *does not include an individual or entity licensed as an agent under Chapter 18 (§ 38.2-1800 et seq.) of*
67 *this title to sell, solicit, or negotiate contracts of insurance or annuity in the Commonwealth.*

68 *"Other affordable care options" means the programs provided under the state plan for medical*
69 *assistance services pursuant to pursuant to Title XIX of the Social Security Act, as amended, and the*
70 *Family Access to Medical Insurance Security (FAMIS) Plan developed pursuant to Title XXI of the*
71 *Social Security Act, as amended.*

72 *"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the*
73 *plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the federal act.*

74 *"Qualified health plan" means a health benefit plan that has in effect a certification that the plan*
75 *meets the criteria for certification described in § 1311(c) of the federal act.*

76 *"Secretary" means the Secretary of the U.S. Department of Health and Human Services.*

77 **§ 38.2-3456. Prohibited activities.**

78 A. ~~A navigator~~ An exchange assistor shall not:

79 1. Engage in any activity that would require an insurance agent license under this title;
80 2. Offer advice about which qualified health plan or qualified dental plan is better or worse for a
81 particular individual or employer;

82 3. Act as an intermediary between an employer and an insurer that offers a qualified health plan or
83 qualified dental plan offered through an exchange; or

84 4. Violate any unfair trade practice and privacy requirements in §§ 38.2-502, 38.2-503, 38.2-506,
85 38.2-509, 38.2-512, 38.2-515, 38.2-612.1, 38.2-613, and 38.2-614 to the extent such requirements are
86 applicable to the activities of navigators or other exchange assistors.

87 B. An individual or entity shall not claim to be, or otherwise hold himself or itself out as, a
88 navigator or conduct business as a navigator in the Commonwealth without having been selected as a
89 navigator in accordance with applicable federal law and without having evidence of successful
90 completion of all navigator requirements prescribed by the Secretary.

91 C. If an individual or entity has engaged in the Commonwealth in one or more of the prohibited
92 activities identified in this section, a complaint may be filed with the Commission. The Commission,
93 upon investigation and verification of the prohibited activity or activities, may order such individual or
94 entity to cease and desist such prohibited conduct.

95 **§ 38.2-3457. License required to act as exchange assistor; penalty for so acting when not licensed.**

96 A. No exchange assistor shall provide advice, guidance, or other assistance with regard to health
97 benefit plans under the provisions of the federal act unless licensed in accordance with this article.

98 B. Any person acting as an exchange assistor while the person is not a holder of a valid license to
99 act as an exchange assistor shall be subject to the penalties prescribed in §§ 38.2-218 and 38.2-1831.

100 C. Licensure as an exchange assistor pursuant to the provisions of this article shall not constitute
101 licensing as an agent under Chapter 18 (§ 38.2-1800 et seq.). No person providing advice or services as
102 a navigator or other exchange assistor under the provisions of the federal act shall be compensated for
103 such advice or services as the holder of a license issued pursuant to Chapter 18; however, the
104 provisions of this subsection shall not prohibit the holder of a license issued pursuant to Chapter 18
105 from being compensated for advice or services rendered as such a licensee and not as a navigator or
106 other exchange assistor.

107 **§ 38.2-3458. Application for license; fee required.**

108 A. Each applicant for a license shall make application to the Commission, in the form and
109 containing the information the Commission prescribes. Each applicant shall, at the time of applying for
110 a license, pay a nonrefundable application processing fee in an amount and in a manner prescribed by
111 the Commission. The prescribed application processing fee shall not be less than \$15 nor more than
112 \$30. The fee shall be collected by the Commission and paid directly into the state treasury and credited
113 to the fund for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

114 B. Except where prohibited by state or federal law, by submitting an application for license, the
115 applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of
116 process on the applicant in any action or proceeding arising in this Commonwealth out of or in
117 connection with the exercise of the license. Such appointment of the clerk of the Commission as agent
118 for service of process shall be irrevocable during the period within which a cause of action against the
119 applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth.
120 Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8

(§ 38.2-800 *et seq.*).

§ 38.2-3459. Issuance of license.

A. Each individual applicant is eligible to receive a license in the form prescribed by the Commission only if (i) the Commission has not found any of the causes enumerated in subsection A of § 38.2-3464 and (ii) the applicant:

1. Is at least 18 years of age;
2. Has satisfied the Commission that he is of good character and has a good reputation for honesty;
3. Has not been convicted of a felony involving fraud, misuse of funds, or misuse of information;
4. Has submitted in a form approved by the Commissioner such information, including criminal history and regulatory background information, as the Commissioner may require;
5. Has established to the satisfaction of the Commission that he has the background, experience, knowledge, and competency in the subject matter that will enable him to deliver accurate information and advice to individuals and groups in the Commonwealth seeking to obtain health insurance coverage under the provisions of the federal act;
6. Has successfully completed not less than 35 hours of instruction in health benefit insurance and the exchange provisions of the federal act satisfactory to the Commission through a training program approved by the Commission;
7. Has passed an examination in a form and manner prescribed by the Commission;
8. Has complied with the other requirements of this article; and
9. Is not registered with the Sex Offender and Crimes Against Minors Registry as required pursuant to Chapter 9 (§ 9.1-900 *et seq.*) of Title 9.1.

B. An entity acting as an exchange assistor is required to obtain a license as an exchange assistor from the Commission. Application shall be made using such application as is acceptable to the Commission. Before approving the application, the Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-3460. License required of individual acting on behalf of entity exchange assistor; use of assumed name.

A. No individual shall act in this Commonwealth on behalf of a non-individual exchange assistor without first obtaining a license in a manner and in a form prescribed by the Commission.

B. No individual whose license has been revoked by the Commission, or voluntarily surrendered in lieu of a hearing before the Commission, shall directly or indirectly own and operate, control, or be employed in any manner by or volunteer with a non-individual exchange assistor during the time period in which the individual is unlicensed unless otherwise authorized by the Commission.

C. In addition to the requirements of §§ 59.1-69 and 59.1-70, any individual or entity acting as an exchange assistor in this Commonwealth under an assumed or fictitious name shall notify the Bureau of Insurance either at the time the application for a license is filed or within 30 calendar days from the date the assumed or fictitious name is adopted, setting forth the name under which such activity is to be conducted. When the business of insurance is no longer conducted under an assumed or fictitious name, notification to the Bureau of Insurance is required within 30 calendar days from the date of cessation of use of such assumed or fictitious name.

§ 38.2-3461. Examination of applicants.

Examinations for licenses shall be conducted at least monthly at the times and places the Commission prescribes. No applicant who fails to pass the examination prescribed by the Commission shall be licensed under this article. If an individual applicant fails three times to pass the examination, the applicant shall be required to wait 30 calendar days before the applicant may retake the examination.

§ 38.2-3462. Duration and termination of licenses and appointments.

A license issued pursuant to this article to:

1. An individual shall authorize him to act as an exchange assistor until the license is otherwise terminated, suspended, or revoked.
2. An entity shall authorize such entity to act as an exchange assistor until the license is otherwise terminated, suspended, or revoked. The dissolution or discontinuance of a partnership, whether by intent or by operation of law, shall automatically terminate all licenses issued to such partnership. The Bureau shall automatically terminate all insurance licenses within 90 calendar days of receiving notification from the clerk of the Commission that the certificate of organization or charter of a domestic limited liability company or corporation, respectively, whether by intent or by operation of law, has been terminated or that the certificate of registration or certificate of authority of a foreign limited liability company or corporation, respectively, has been revoked.

§ 38.2-3463. Requirement to report to Commission.

A. Each licensed exchange assistor shall report within 30 calendar days to the Commission any change in his residence or name.

182 *B. Each licensed exchange assistor convicted of a felony shall report within 30 calendar days to the*
183 *Commission the facts and circumstances regarding the criminal conviction.*

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

188 *D. The license of any licensed exchange assistor shall terminate immediately when such agent has*
189 *moved his residence from the Commonwealth, whether or not the Commission has been notified of such*
190 *move.*

191 **§ 38.2-3464. Grounds for placing on probation, revoking, suspending, or refusing to issue or**
192 **renew license.**

193 *The Commission may, in addition to or in lieu of a penalty imposed under § 38.2-218, place on*
194 *probation, suspend, revoke, or refuse to issue or renew any person's license to act as an exchange*
195 *assistor for any one or more of the following causes:*

196 *1. Providing materially incorrect, misleading, incomplete, or untrue information in the license*
197 *application or any other document filed with the Commission;*

198 *2. Violating any (i) provision of this article, (ii) other law of the Commonwealth, (iii) provision of*
199 *the federal act, or (iv) regulation, subpoena, or order of the Commission;*

200 *3. Obtaining or attempting to obtain a license through misrepresentation or fraud;*

201 *4. Except as specifically authorized by the provisions of the federal act:*

202 *a. Engaging in any activities that would require licensing pursuant to the provisions of Chapter 18*
203 *(§ 38.2-1800 et seq.) unless licensed thereunder;*

204 *b. Providing advice concerning the benefits, terms, and features of a particular health benefit plan or*
205 *offering advice about which health benefit plan is better or worse for a particular individual or*
206 *business, except in the capacity of a licensee pursuant to the provisions of Chapter 18 (§ 38.2-1800 et*
207 *seq.);*

208 *c. Recommending a particular health benefit plan or advising individuals or businesses about which*
209 *health benefit plan to choose, except in the capacity of a licensee pursuant to the provisions of Chapter*
210 *18 (§ 38.2-1800 et seq.);*

211 *d. Soliciting or assisting any person or business that the person knows is currently insured under an*
212 *existing health benefit plan; or*

213 *e. Receiving any commission, compensation, or anything of value from any insurer, health benefit*
214 *plan, business, or consumer for providing advice or services specifically authorized to be provided as an*
215 *exchange assistor pursuant to the provisions of the federal act;*

216 *5. Engaging in any conduct or activity proscribed pursuant to § 38.2-3466;*

217 *6. Providing factually inaccurate information, with knowledge that the information is factually*
218 *inaccurate, to uninsured persons and businesses regarding the availability of premium tax credits under*
219 *§ 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under § 1402 of the federal*
220 *act;*

221 *7. Having admitted or been found to have committed any fraud;*

222 *8. Having been convicted of a felony involving fraud, misuse of funds, or misuse of information;*

223 *9. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence or*
224 *untrustworthiness in the conduct of activities in the Commonwealth or elsewhere;*

225 *10. Forging another's name to an application for health benefits or to any document related to the*
226 *activities conducted through an exchange;*

227 *11. Improperly using notes or any other reference material to complete an examination for an*
228 *insurance license;*

229 *12. Failing to comply with an administrative or court order imposing a child support obligation;*

230 *13. Failing to pay state income tax or comply with any administrative or court order directing*
231 *payment of state income tax;*

232 *14. Failing to complete continuing education classes approved by the Commissioner as provided in*
233 *Article 7 (§ 38.2-1866 et seq.) of Chapter 18; or*

234 *15. Being a person for whom registration with the Sex Offender and Crimes Against Minors Registry*
235 *is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.*

236 **§ 38.2-3465. Refusal to issue and revocation of license; hearing; new application.**

237 *A. If the Commission believes that any applicant for a license is not of good character, does not*
238 *have a good reputation for honesty, or otherwise does not satisfy the conditions for licensure under this*
239 *article, the Commission may refuse to issue the license, subject to the right of the applicant to demand a*
240 *hearing on the application. The Commission shall not revoke or suspend an existing license until the*
241 *licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue*
242 *a new license or proposes to revoke or suspend an existing license, it shall give the applicant or*
243 *licensee at least 10 calendar days' notice in writing of the time and place of the hearing if a hearing is*

requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension, as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the expiration of a period of five years from the date of the Commission's order, or such other period of time as the Commission prescribes in its order.

B. The license of an entity may be suspended, revoked, or refused if the Commission finds, after notice and an opportunity to be heard, that a violation by an individual licensee acting at the direction of, on behalf of, or with the permission of the entity was known to be a violation by one or more of the partners, officers, or managers acting on behalf of the entity, and the violation was neither reported to the Commission nor corrective action taken.

C. In addition to or in lieu of any applicable denial, suspension, or revocation of a license, a person may, after notice and an opportunity to be heard, be subject to a penalty pursuant to § 38.2-218.

D. The Commission shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title, even if the person's license or registration has been surrendered, terminated, suspended, or revoked, or has lapsed by operation of law.

§ 38.2-3466. Prohibited conduct; penalty.

A. No exchange assistor shall knowingly:

1. Provide to any political party or political organization, for purposes related to the registration of voters in the Commonwealth, any information that the person obtained while acting as an exchange assistor or otherwise engaged in activities involving the dissemination and collection of information and advice to persons in the Commonwealth regarding health insurance coverage under the provisions of the federal act;

2. Disclose or release any personal information, as defined in § 18.2-186.6, of any individual that the person obtained while acting as an exchange assistor or otherwise engaging in activities involving the dissemination and collection of information and advice to persons in the Commonwealth regarding health insurance coverage under the provisions of the federal act; or

3. Encourage or direct an individual to knowingly make any false, fictitious, or fraudulent statements or representations or otherwise to knowingly provide any false, fictitious, or fraudulent information to an exchange or any agency of the Commonwealth, another state, or the federal government in connection with (i) an application for health insurance coverage, (ii) enrollment in a health benefit program, or (iii) premium tax credits under § 36B of the Internal Revenue Code of 1986, cost-sharing reductions under § 1402 of the federal act, or any other subsidies provided under the provisions of the federal act.

B. Any person convicted of a violation of this section is guilty of a Class 1 misdemeanor.