

SENATE BILL No. 362

By Committee on Public Health and Welfare

2-10

1 AN ACT concerning the regulation of health insurance navigators.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 9, and amendments thereto, shall be
5 known and may be cited as the health care insurance navigator registration
6 act.

7 Sec. 2. As used in this act, unless the context clearly requires
8 otherwise:

9 (a) "Attorney general" means the attorney general of the state of
10 Kansas and any authorized agent or designee thereof;

11 (b) "data breach" means the unauthorized access and acquisition of
12 computerized data that compromise the security, confidentiality or
13 integrity of personal information maintained by an individual or a
14 commercial entity;

15 (c) "health care exchange" means any health benefit exchange
16 established or operating in this state, including any exchange established,
17 supervised or operated by the United States department of health and
18 human services;

19 (d) "health care insurance navigator" means a person who is selected
20 to perform the activities and duties identified in 42 U.S.C. § 18031(i).
21 "Health care insurance navigator" includes any person who receives grant
22 moneys from the United States department of health and human services,
23 state or a health care exchange or receives private moneys to perform any
24 of the activities or duties identified in 42 U.S.C. § 18031(i);

25 (e) "person" means any individual, corporation, partnership,
26 association or voluntary organization;

27 (f) (1) "personal information" means an individual's first name or first
28 initial and last name linked to any one or more of the following data
29 elements that relate to such individual:

30 (A) Such individual's driver's license number or state identification
31 card number;

32 (B) such individual's financial account number, or credit or debit card
33 number, alone or in combination with any required security code, access
34 code or password that would permit access to such individual's financial
35 account; or

36 (C) such individual's social security number;

1 (2) the term "personal information" does not include publicly
2 available information that is lawfully made available to the general public
3 from federal, state or local government records.

4 Sec. 3. (a) (1) It shall be unlawful for any person to perform, offer to
5 perform, or advertise any service as a health care insurance navigator in
6 this state, or receive health care insurance navigator grant funding from the
7 United States department of health and human services, this state, or a
8 health care exchange or private funds unless such person has been issued a
9 health care insurance navigator registration by the attorney general in
10 accordance with this act and such registration has not been suspended or
11 revoked.

12 (2) A navigator who complies with the requirements of this act shall:

13 (A) Conduct public education activities to raise awareness of the
14 availability of qualified health plans;

15 (B) distribute fair and impartial information concerning enrollment in
16 qualified health plans offered within the exchange and the availability of
17 the premium tax credits under section 36B of the internal revenue code of
18 1986, 26 U.S.C. § 36B, and cost-sharing reductions under section 1402 of
19 the federal patient protection and affordable care act;

20 (C) facilitate enrollment in qualified health plans;

21 (D) provide referrals to appropriate federal and state agencies for any
22 enrollee with a grievance, complaint or question regarding such enrollee's
23 health plan or coverage or a determination under such plan or coverage;
24 and

25 (E) provide information in a manner that is culturally and
26 linguistically appropriate to the needs of the population being served by
27 the exchange.

28 (3) (A) Any person applying for a health care insurance navigator
29 registration or a renewal shall make application on a form prescribed by
30 the attorney general. The applicant shall declare under penalty of perjury
31 that the statements made in the application are true, correct and complete
32 to the best of the applicant's knowledge and belief. Any health care
33 insurance navigator shall:

34 (i) Have at least a high school diploma or general equivalency
35 diploma;

36 (ii) successfully complete all federal and state training provided by
37 the exchange or equivalent state requirements as determined by the
38 attorney general;

39 (iii) submit a set of fingerprints in accordance with section 5, and
40 amendments thereto;

41 (iv) submit a non-refundable application renewal or registration fee in
42 the amount of \$100;

43 (v) reside in this state or maintains such person's principal place of

1 business in this state;

2 (vi) disclose any disqualification due to having committed any act
3 that would be grounds for denial, suspension or revocation of a health care
4 insurance navigator registration in accordance with this section;

5 (vii) be a United States citizen or legal alien who possesses work
6 authorization from the United States bureau of citizenship and immigration
7 services; and

8 (viii) maintain a surety bond in the amount of \$10,000. The surety
9 bond shall be submitted to the secretary of state along with the annual
10 notice. Each surety bond shall be approved by the attorney general prior to
11 filing.

12 Each surety bond shall be subject to the following:

13 (a) A copy of the bond, and thereafter, proof of annual renewal of the
14 bond, shall be filed with the secretary of state with the annual notice. Each
15 such filing shall be accompanied by a filing fee of no more than \$250 to
16 cover the cost of filing and administration. Fees received under this act by
17 the secretary of state shall be deposited in the state treasury to the credit of
18 the information services fee fund.

19 (b) No surety on a health care insurance navigator bond shall cancel
20 such bond without giving written notice to the secretary of state and the
21 health care insurance navigator. Unless such health care insurance
22 navigator files another \$10,000 surety bond with the secretary of state on
23 or before the cancellation date of such health care insurance navigator's
24 surety bond, then such health care insurance navigator will no longer be
25 authorized to do business in this state as a health care insurance navigator.

26 (c) The bond shall be in favor of any person and the attorney general
27 for the benefit of any person who is damaged by any violation of this act.
28 The bond shall cover any violation occurring during the time period during
29 which the bond is in effect.

30 (d) Any person claiming against the bond for a violation of this act
31 may maintain an action at law against the health care insurance navigator.

32 (B) The application form shall contain the following:

33 (i) The applicant's name, address, telephone number and any other
34 means of contact;

35 (ii) information which verifies that the applicant has met the
36 requirements set forth in subsection (a)(1);

37 (iii) information concerning the applicant's credit rating and
38 bankruptcies, if any, as required by the attorney general; and

39 (iv) any other information required by the attorney general by rules
40 and regulations to enable the attorney general to determine the character,
41 experience, ability and other qualifications of the applicant.

42 (C) If the applicant is not an individual, such applicant shall submit
43 the application information and fees for each individual employed by such

1 applicant to perform services as a health care insurance navigator.

2 (b) (1) Each health care insurance navigator registration shall expire
3 on June 30 following the date of issuance.

4 (2) Each health care insurance navigator registration may be renewed
5 upon filing an application for renewal and paying the renewal fee.

6 (c) The attorney general shall not issue the health care insurance
7 navigator registration if the person is not qualified under subsection (a), or
8 if such person has been convicted of any felony offense or misdemeanor
9 offense involving fraud or dishonesty, including any federal or military
10 conviction in another state for a comparable offense involving fraud or
11 dishonesty.

12 (d) The attorney general may deny, suspend, revoke or refuse to
13 renew the health care insurance navigator registration if:

14 (1) The health care insurance navigator is convicted of any felony
15 offense;

16 (2) the health care insurance navigator is charged with or convicted of
17 a misdemeanor offense involving fraud or dishonesty;

18 (3) the health care insurance navigator provided information to
19 consumers that the health care insurance navigator knew or should have
20 known was false or fraudulent;

21 (4) the health care insurance navigator has engaged in intentional or
22 negligent conduct that resulted in the unauthorized release of a consumer's
23 personal information; or

24 (5) the health care insurance navigator has committed any violation of
25 K.S.A. 2013 Supp. 21-5839, and amendments thereto;

26 (6) the health care insurance navigator has engaged in any activity or
27 made any contribution to support any activity which constitutes expressly
28 advocating the nomination, election or defeat of a clearly identified
29 candidate; or

30 (7) the health care insurance navigator is not qualified.

31 (e) Any action taken under this section which affects any health care
32 insurance navigator registration or imposes any administrative penalty
33 shall be taken only after notice and an opportunity for a hearing conducted
34 in accordance with the provisions of the Kansas administrative procedure
35 act.

36 (f) Any health care insurance navigator or any person employing a
37 health care insurance navigator shall report to the attorney general any data
38 breach that results in the unauthorized release of a consumer's personal
39 information. Such person shall make a good faith effort to report any data
40 breach resulting in any unauthorized release of personal information to
41 each affected individual whose personal information was released. Such
42 report shall be made within 24 hours after discovering such unauthorized
43 breach. The attorney general shall submit a report on or before February 1

1 of each year to the president and minority leader of the senate and the
2 speaker and minority leader of the house of representatives detailing the
3 number of breaches reported to the attorney general pursuant to this
4 subsection and the circumstances of each breach.

5 (g) Notwithstanding any other law to the contrary, no health care
6 insurance navigator shall:

7 (1) Sell, solicit or negotiate insurance for any class of insurance when
8 assisting individuals with enrollment or any other health care insurance
9 navigator activities or duties which are performed through any health care
10 exchange established or operating in this state, including any health care
11 exchange established or operated by the United States department of
12 health and human services;

13 (2) offer advice about which health insurance plan is better or worse
14 for a particular individual or employer;

15 (3) recommend or endorse a particular health insurance plan or advise
16 consumers about which health care insurance plan to choose;

17 (4) provide any information or services related to any health
18 insurance plan or other insurance product not offered in the health care
19 exchange;

20 (5) accept any compensation or consideration directly or indirectly
21 from any issuer of accident and health insurance or stop-loss insurance that
22 is dependent, in whole or in part, on whether a person enrolls in or
23 purchases a particular private health insurance plan;

24 (6) participate in any door-to-door solicitation, telephone solicitation
25 or canvassing of eligible households; or

26 (7) participate in any mail or online efforts to direct people to another
27 website.

28 (h) The attorney general shall maintain a website for the purpose of
29 providing the public with a complete list of all currently registered health
30 care insurance navigators.

31 Sec. 4. Any person who is acting as a health care insurance navigator
32 pursuant to 42 U.S.C. § 18031(i) on or after the effective date of this act
33 shall register with the attorney general on or before January 1, 2015, in
34 order to continue performing the duties and activities of a health care
35 insurance navigator after the effective date of this act.

36 Sec. 5. (a) (1) The attorney general may require an original applicant
37 for registration as a health care insurance navigator to be fingerprinted and
38 submit to a state and national criminal history record check pursuant to
39 K.S.A. 22-4701 et seq., and amendments thereto, and public law 92-554.
40 The fingerprints shall be used to identify the applicant and to determine
41 whether the applicant has a record of criminal history in this state or other
42 jurisdictions. The attorney general is authorized to submit the fingerprints
43 to the Kansas bureau of investigation and the federal bureau of

1 investigation for a state and national criminal history record check. The
2 attorney general may use the information obtained from fingerprinting and
3 the applicant's criminal history for purposes of verifying the identification
4 of any applicant and in the official determination of character and fitness
5 of the applicant for registration as a health care insurance navigator in this
6 state.

7 (2) No fingerprints shall be required to be submitted for renewal of a
8 currently registered health care insurance navigator.

9 (b) Local and state law enforcement officers and agencies shall assist
10 the attorney general in the taking and processing of fingerprints of
11 applicants for registration as a health care insurance navigator and shall
12 release all records of adult convictions and nonconvictions and adult
13 convictions or adjudications of another state or country to the attorney
14 general.

15 (c) The attorney general shall fix a fee for fingerprinting of applicants
16 or registrants, or both, as may be required by the attorney general in an
17 amount necessary to reimburse the attorney general for the cost of the
18 fingerprinting. Fees collected under this subsection shall be deposited in
19 the health care insurance navigator registration fund.

20 (d) There is hereby created in the state treasury the health care
21 insurance navigator registration fund. All moneys credited to the fund shall
22 be used to pay the Kansas bureau of investigation for the processing of
23 fingerprints and criminal history background checks for the attorney
24 general related to the registration of health care insurance navigators. The
25 fund shall be administered by the attorney general. All expenditures from
26 the fund shall be made in accordance with appropriation acts upon
27 warrants of the director of accounts and reports issued pursuant to
28 vouchers approved by the attorney general or a person designated by the
29 attorney general.

30 Sec. 6. (a) Any person may file a duly verified complaint with the
31 attorney general alleging one or more violations of this act.

32 (b) The complaint shall be on a form approved by the attorney
33 general and shall set forth the alleged act or omission stated in subsection
34 (a), and a statement of sufficient facts upon which a reasonable person
35 could conclude that the act or omission specified in subsection (a) has
36 been committed. Nothing in this section shall be construed to require the
37 complainant to first file a complaint with the attorney general before
38 seeking relief or remedies allowed by law.

39 (c) A complaint received by the attorney general as provided in this
40 section may be investigated by the attorney general or referred to any
41 county or district attorney for appropriate disposition or investigation. The
42 attorney general is hereby authorized to:

43 (1) Make investigations and examinations of the health care insurance

1 navigator's operations, books and records as the attorney general deems
2 necessary for the protection of the public and control access to any
3 documents and records of the health care insurance navigator under
4 examination or investigation;

5 (2) charge reasonable costs of investigation, examination and
6 administration of this act, to be paid by the health care insurance navigator.
7 All funds collected pursuant to this paragraph shall be deposited in the
8 health care insurance navigator registration fund;

9 (3) exchange any information regarding the administration of this act
10 with any agency of the United States or any state or political subdivision
11 thereof which regulates health care insurance navigators or administers
12 statutes, rules and regulations or programs related to health care insurance
13 navigators, and to enter into information-sharing arrangements with other
14 governmental agencies or associations representing governmental agencies
15 which are deemed necessary or beneficial to the administration of this act;

16 (4) disclose to any person or entity that an applicant's, or registrant's
17 application or registration has been denied, suspended, revoked or refused
18 renewal;

19 (5) require or permit any person to file a written statement, under oath
20 or otherwise, as the attorney general may direct, setting forth all the facts
21 and circumstances concerning any apparent violation of this act, or any
22 rule and regulation promulgated thereunder or any order issued pursuant to
23 this act; and

24 (6) refer such evidence as may be available concerning any violation
25 of this act or of any rule and regulation adopted thereunder to the proper
26 county or district attorney.

27 (d) For the purpose of any examination, investigation or proceeding
28 under this act, the attorney general or any officer designated by the
29 attorney general may administer oaths and affirmations, subpoena
30 witnesses, compel such witnesses' attendance, adduce evidence and require
31 the production of any matter which is relevant to the examination or
32 investigation, including the existence, description, nature, custody,
33 condition and location of any books, documents or other tangible things
34 and the identity and location of persons having knowledge of relevant
35 facts, or any other matter reasonably calculated to lead to the discovery of
36 relevant information or items.

37 (e) In case of the refusal to obey a subpoena or court order issued to
38 any person who performs, offers to perform, or advertises any service as a
39 health care insurance navigator, any court of competent jurisdiction, upon
40 application by the attorney general, may issue to that person an order
41 requiring the person to appear before the attorney general, or the officer
42 designated by the attorney general, to produce documentary evidence if so
43 ordered or to give evidence touching the matter under investigation or in

1 question. Any failure to obey the order of the court may be punished by the
2 court as a contempt of court.

3 (f) No person is excused from attending and testifying or from
4 producing any document or record before the attorney general or in
5 obedience to the subpoena of the attorney general or in any proceeding
6 instituted by the attorney general, on the ground that the testimony or
7 evidence, documentary or otherwise, required of the person may tend to
8 incriminate the person or subject the person to a penalty or forfeiture. No
9 individual may be prosecuted or subjected to any penalty or forfeiture for
10 or on account of any transaction or matter concerning which such person is
11 compelled, after claiming privilege against self-incrimination, to testify or
12 produce evidence, documentary or otherwise, except that the individual so
13 testifying shall not be exempt from prosecution and punishment for
14 perjury committed in so testifying.

15 Sec. 7. (a) Any applicant, person who operates or provides services as
16 a health care insurance navigator who violates any provision of the health
17 care insurance navigator registration act or any rules and regulations
18 adopted thereunder, in addition to any other penalty provided by law, may
19 incur a civil penalty imposed under subsection (b) in an amount not less
20 than \$100 nor more than \$3,000 for each violation and, in the case of a
21 continuing violation, every day such violation continues may be deemed a
22 separate violation.

23 (b) No civil penalty shall be imposed pursuant to this section except
24 upon the written order of the attorney general to the applicant or person
25 who operates or provides services as a registered health care insurance
26 navigator who committed the violation. Such order shall state the
27 violation, the penalty to be imposed and the right of the applicant or
28 person who operates or provides services as a registered health care
29 insurance navigator to appeal to the attorney general. Any such applicant
30 or person who operates or provides services as a registered health care
31 insurance navigator, within 20 days after notification, may make written
32 request to the attorney general for a hearing in accordance with the
33 provisions of the Kansas administrative procedure act. The attorney
34 general shall affirm, reverse or modify the order and shall specify the
35 reasons therefor.

36 (c) Any applicant or person who operates or provides services as a
37 registered health care insurance navigator aggrieved by a final order of the
38 attorney general made under this section may appeal such order to the
39 district court in the manner provided by the Kansas judicial review act.

40 (d) Any civil penalty imposed pursuant to the provisions of this
41 section shall be recovered by the attorney general, remitted to the state
42 treasurer, deposited in the state treasury and credited to the state general
43 fund.

1 (e) Any action taken pursuant to this section shall be in addition to
2 and not in lieu of any other penalty prescribed by law.

3 Sec. 8. The attorney general may adopt rules and regulations the
4 attorney general deems necessary for the administration of this act.

5 Sec. 9. If any provision of this act or its application to any person or
6 circumstance is held invalid, such invalidity shall not affect any other
7 provision or application of the act which can be given effect without the
8 invalid provision or application and to this end the provisions of this act
9 are severable.

10 Sec. 10. This act shall take effect and be in force from and after its
11 publication in the statute book.