

SENATE BILL No. 362

By Committee on Public Health and Welfare

2-10

1 AN ACT concerning the regulation of health *care* 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~~ ***an individual***
20 who is selected to perform the activities and duties identified in 42 U.S.C.
21 § 18031(i). "Health care insurance navigator" includes any ***individual who***
22 ***performs the activities and duties identified in 42 U.S.C. § 18031(i) and***
23 ***who is employed by any*** person who receives grant moneys from the
24 United States department of health and human services, state or a health
25 care exchange or receives private moneys to perform any of the activities
26 or duties identified in 42 U.S.C. § 18031(i). ***"Health care insurance***
27 ***navigator" shall include non-navigator assistants as outlined in 45***
28 ***C.F.R. § 155.205(d) and certified application counselors outlined in 45***
29 ***C.F.R. § 155.225;***

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

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

35 (A) Such individual's driver's license number or state identification
36 card number;

1 (B) such individual's financial account number, or credit or debit card
2 number, alone or in combination with any required security code, access
3 code or password that would permit access to such individual's financial
4 account; or

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

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

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

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

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

20 (B) distribute fair and impartial information concerning enrollment in
21 qualified health plans offered within the exchange and the availability of
22 the premium tax credits under section 36B of the internal revenue code of
23 1986, 26 U.S.C. § 36B, and cost-sharing reductions under section 1402 of
24 the federal patient protection and affordable care act;

25 (C) facilitate enrollment in qualified health plans;

26 (D) provide referrals to appropriate federal and state agencies for any
27 enrollee with a grievance, complaint or question regarding such enrollee's
28 health plan or coverage or a determination under such plan or coverage;
29 and

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

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

39 (i) Have at least a high school diploma or general equivalency
40 diploma;

41 (ii) successfully complete all federal and state training provided by
42 the exchange or equivalent state requirements as determined by the
43 attorney general;

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

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

5 (v) reside in this state or maintains such person's principal place of
6 business in this state;

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

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

13 ~~(viii) maintain a surety bond in the amount of \$10,000. The surety~~
14 ~~bond shall be submitted to the secretary of state along with the annual~~
15 ~~notice. Each surety bond shall be approved by the attorney general prior to~~
16 ~~filing. Each surety bond shall be subject to the following: (a) A copy of~~
17 ~~the bond, and thereafter, proof of annual renewal of the bond, shall be filed~~
18 ~~with the secretary of state with the annual notice. Each such filing shall be~~
19 ~~accompanied by a filing fee of no more than \$250 to cover the cost of~~
20 ~~filing and administration. Fees received under this act by the secretary of~~
21 ~~state shall be deposited in the state treasury to the credit of the information~~
22 ~~services fee fund.~~

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

30 ~~(c) The bond shall be in favor of any person and the attorney general~~
31 ~~for the benefit of any person who is damaged by any violation of this act.~~
32 ~~The bond shall cover any violation occurring during the time period during~~
33 ~~which the bond is in effect.~~

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

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

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

39 (ii) information which verifies that the applicant has met the
40 requirements set forth in subsection ~~(a)(1)~~ **(a)(3)(A)**;

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

43 (iv) any other information required by the attorney general by rules

1 and regulations to enable the attorney general to determine the character,
2 experience, ability and other qualifications of the applicant.

3 (C) If the applicant is not an individual, such applicant shall submit
4 the application information and fees for each individual employed by such
5 applicant to perform services as a health care insurance navigator.

6 (b) (1) Each health care insurance navigator registration shall expire
7 on June 30 following the date of issuance, *except any health care*
8 *insurance navigator who registers before June 30, 2015, shall have such*
9 *registration expire on June 30, 2016.*

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

12 (c) The attorney general shall not issue the health care insurance
13 navigator registration if the person is not qualified under subsection (a), or
14 if such person has been convicted of any felony offense or misdemeanor
15 offense involving fraud or dishonesty, including any federal or military
16 conviction in another state for a comparable offense involving fraud or
17 dishonesty.

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

20 (1) The health care insurance navigator is convicted of any felony
21 offense;

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

24 (3) the health care insurance navigator provided information to
25 consumers that the health care insurance navigator knew or should have
26 known was false or fraudulent;

27 (4) the health care insurance navigator has engaged in intentional or
28 negligent conduct that resulted in the unauthorized release of a consumer's
29 personal information; ~~or~~

30 (5) the health care insurance navigator has ~~committed~~ ***been convicted***
31 ***of*** any violation of K.S.A. 2013 Supp. 21-5839, and amendments thereto;
32 ***or***

33 (6) ~~the health care insurance navigator has engaged in any activity or~~
34 ~~made any contribution to support any activity which constitutes expressly~~
35 ~~advocating the nomination, election or defeat of a clearly identified~~
36 ~~candidate; or~~

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

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

43 (f) Any health care insurance navigator or any person employing a

1 health care insurance navigator shall report to the attorney general any data
2 breach that results in the unauthorized release of a consumer's personal
3 information. Such person shall make a good faith effort to report any data
4 breach resulting in any unauthorized release of personal information to
5 each affected individual whose personal information was released. Such
6 report shall be made within 24 hours after discovering such unauthorized
7 breach. The attorney general shall submit a report on or before February 1
8 of each year to the president and minority leader of the senate and the
9 speaker and minority leader of the house of representatives detailing the
10 number of breaches reported to the attorney general pursuant to this
11 subsection and the circumstances of each breach.

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

14 (1) Sell, solicit or negotiate insurance for any class of insurance when
15 assisting individuals with enrollment or any other health care insurance
16 navigator activities or duties which are performed through any health care
17 exchange established or operating in this state, including any health care
18 exchange established or operated by the United States department of
19 health and human services;

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

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

24 (4) provide any information or services related to any health
25 insurance plan or other insurance product not offered in the health care
26 exchange;

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

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

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

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

38 Sec. 4. Any person who is acting as a health care insurance navigator
39 pursuant to 42 U.S.C. § 18031(i) on or after the effective date of this act
40 shall register with the attorney general on or before ~~January 1~~ **June 30,**
41 2015, in order to continue performing the duties and activities of a health
42 care insurance navigator after the effective date of this act.

43 Sec. 5. (a) (1) The attorney general may require an original applicant

1 for registration as a health care insurance navigator to be fingerprinted and
2 submit to a state and national criminal history record check pursuant to
3 K.S.A. 22-4701 et seq., and amendments thereto, and public law 92-554.
4 The fingerprints shall be used to identify the applicant and to determine
5 whether the applicant has a record of criminal history in this state or other
6 jurisdictions. The attorney general is authorized to submit the fingerprints
7 to the Kansas bureau of investigation and the federal bureau of
8 investigation for a state and national criminal history record check. The
9 attorney general may use the information obtained from fingerprinting and
10 the applicant's criminal history for purposes of verifying the identification
11 of any applicant and in the official determination of character and fitness
12 of the applicant for registration as a health care insurance navigator in this
13 state.

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

16 (b) Local and state law enforcement officers and agencies shall assist
17 the attorney general in the taking and processing of fingerprints of
18 applicants for registration as a health care insurance navigator and shall
19 release all records of adult convictions and nonconvictions and adult
20 convictions or adjudications of another state or country to the attorney
21 general.

22 (c) The attorney general shall fix a fee for fingerprinting of applicants
23 or registrants, or both, as may be required by the attorney general in an
24 amount necessary to reimburse the attorney general for the cost of the
25 fingerprinting. Fees collected under this subsection shall be deposited in
26 the health care insurance navigator registration fund. ***Local law***
27 ***enforcement officers and agencies may charge a fee to be reimbursed***
28 ***for expenses incurred in taking and processing the fingerprints under***
29 ***this section.***

30 (d) There is hereby created in the state treasury the health care
31 insurance navigator registration fund. All moneys credited to the fund shall
32 be used to ~~pay the Kansas bureau of investigation for the processing of~~
33 ~~fingerprints and criminal history background checks for the attorney~~
34 ~~general related to the registration of health care insurance navigators. The~~
35 ~~fund shall be administered by the attorney general~~ ***for the administration***
36 ***of this act.*** All expenditures from the fund shall be made in accordance
37 with appropriation acts upon warrants of the director of accounts and
38 reports issued pursuant to vouchers approved by the attorney general or a
39 person designated by the attorney general.

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

42 (b) The complaint shall be on a form approved by the attorney
43 general and shall set forth the alleged act or omission stated in subsection

1 (a), and a statement of sufficient facts upon which a reasonable person
2 could conclude that the act or omission specified in subsection (a) has
3 been committed. Nothing in this section shall be construed to require the
4 complainant to first file a complaint with the attorney general before
5 seeking relief or remedies allowed by law.

6 (c) A complaint received by the attorney general as provided in this
7 section may be investigated by the attorney general ~~or referred to any~~
8 ~~county or district attorney for appropriate disposition or investigation.~~ The
9 attorney general is hereby authorized to:

10 (1) Make investigations and examinations of the health care insurance
11 navigator's operations, books and records as the attorney general deems
12 necessary for the protection of the public and control access to any
13 documents and records of the health care insurance navigator under
14 examination or investigation;

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

19 (3) exchange any information regarding the administration of this act
20 with any agency of the United States or any state or political subdivision
21 thereof which regulates health care insurance navigators or administers
22 statutes, rules and regulations or programs related to health care insurance
23 navigators, and to enter into information-sharing arrangements with other
24 governmental agencies or associations representing governmental agencies
25 which are deemed necessary or beneficial to the administration of this act;

26 (4) disclose to any person or entity that an applicant's, or registrant's
27 application or registration has been denied, suspended, revoked or refused
28 renewal; **and**

29 (5) require or permit any person to file a written statement, under oath
30 or otherwise, as the attorney general may direct, setting forth all the facts
31 and circumstances concerning any apparent violation of this act, or any
32 rule and regulation promulgated thereunder or any order issued pursuant to
33 this act; ~~and~~

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

37 (d) For the purpose of any examination, investigation or proceeding
38 under this act, the attorney general or any officer designated by the
39 attorney general may administer oaths and affirmations, subpoena
40 witnesses, compel such witnesses' attendance, adduce evidence and require
41 the production of any matter which is relevant to the examination or
42 investigation, including the existence, description, nature, custody,
43 condition and location of any books, documents or other tangible things

1 and the identity and location of persons having knowledge of relevant
2 facts, or any other matter reasonably calculated to lead to the discovery of
3 relevant information or items.

4 (e) In case of the refusal to obey a subpoena or court order issued to
5 any person who performs, offers to perform, or advertises any service as a
6 health care insurance navigator, any court of competent jurisdiction, upon
7 application by the attorney general, may issue to that person an order
8 requiring the person to appear before the attorney general, or the officer
9 designated by the attorney general, to produce documentary evidence if so
10 ordered or to give evidence touching the matter under investigation or in
11 question. Any failure to obey the order of the court may be punished by the
12 court as a contempt of court.

13 (f) No person is excused from attending and testifying or from
14 producing any document or record before the attorney general or in
15 obedience to the subpoena of the attorney general or in any proceeding
16 instituted by the attorney general, on the ground that the testimony or
17 evidence, documentary or otherwise, required of the person may tend to
18 incriminate the person or subject the person to a penalty or forfeiture. No
19 individual may be prosecuted or subjected to any penalty or forfeiture for
20 or on account of any transaction or matter concerning which such person is
21 compelled, after claiming privilege against self-incrimination, to testify or
22 produce evidence, documentary or otherwise, except that the individual so
23 testifying shall not be exempt from prosecution and punishment for
24 perjury committed in so testifying.

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

33 (b) No civil penalty shall be imposed pursuant to this section except
34 upon the written order of the attorney general to the applicant or person
35 who operates or provides services as a registered health care insurance
36 navigator who committed the violation. Such order shall state the
37 violation, the penalty to be imposed and the right of the applicant or
38 person who operates or provides services as a registered health care
39 insurance navigator to appeal to the attorney general. Any such applicant
40 or person who operates or provides services as a registered health care
41 insurance navigator, ~~within 20 days after notification,~~ may make written
42 request to the attorney general for a hearing in accordance with the
43 provisions of the Kansas administrative procedure act. The attorney

1 general shall affirm, reverse or modify the order and shall specify the
2 reasons therefor.

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

7 (d) Any civil penalty imposed pursuant to the provisions of this
8 section shall be recovered by the attorney general, remitted to the state
9 treasurer, deposited in the state treasury and credited to the state general
10 fund.

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

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

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

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