

HOUSE BILL 881

By Pitts

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, relative to the regulation of navigators in the implementation of the Patient Protection and Affordable Care Act regarding health insurance exchanges.

WHEREAS, HR. 3590, the Patient Protection and Affordable Care Act (PPACA) became law on March 23, 2010; and

WHEREAS, PPACA established healthcare exchanges to facilitate the purchase of health insurance; and

WHEREAS, currently health insurance agents must be licensed under the Tennessee Insurance Producer Licensing Act of 2002, Tenn. Code Ann.. § 56-6-101; and

WHEREAS, the act requires insurance agents to complete both prelicensing and continuing education, undergo background checks, fingerprinting, and other consumer protections; and

WHEREAS, the United States Congress has declared in the McCarran Ferguson Act and the Gramm Leach Bliley Act that states should regulate the business of insurance; and

WHEREAS, PPACA has created a new, federally mandated program which requires that exchanges must establish a navigator program to assist in the enrollment of exchanges; and

WHEREAS, navigators assisting consumers will obtain disclosure of private personal information such as social security numbers, tax returns, income, and personal health information; and

WHEREAS, it is in the best interests of the people of the state of Tennessee that navigators be licensed and regulated insofar as is consistent with PPACA; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following as new part 12:

56-6-1201. For purposes of the act:

(1) "Exchange" means a health benefit exchange established or operated in this state, including a health benefit exchange established or operated by the secretary of the United States department of health and human services, pursuant to Section 1311 of the federal Affordable Care Act; and

(2) "Navigator" means a person selected to perform the activities and duties identified in Section 1311(i) of the federal Affordable Care Act. For the purposes of this section, 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 within the meaning of § 56-6-1203.

56-6-1202. Only a person licensed as an insurance producer in this state in accordance with chapter 6 may:

(1) Sell, solicit, or negotiate health insurance;

(2) Make recommendations to purchasers, enrollees, or employers or prospective purchasers or enrollees concerning the substantive benefits, terms, or conditions of health plans; or

(3) 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.

56-6-1203. Prior to any exchange becoming operational in this state, the commissioner shall:

(1) Develop criteria for use by any exchange for the selection of a navigator pursuant to Section 1311(i) of the federal Affordable Care Act and state law;

(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 federal 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 section and Section 131 1(1) of the federal Affordable Care Act.

56-6-1204. An individual, other than a licensed insurance producer under chapter 6, or the officers and employees of an insurer licensed to transact business in this state, may not act in the capacity of a navigator unless the individual:

(1) Is at least eighteen (18) years of age;

(2) Has completed and submitted a disclosure form, which must be developed by the superintendent and which may include such information as the commissioner determines necessary, and has declared under penalty of refusal, suspension, or revocation of the navigator certification that the statements made in the form are true, correct, and complete to the best of the individual's knowledge and belief;

(3) Has submitted to any criminal history record check or regulatory background check required by the commissioner by rule;

(4) Has not committed any act that would be a ground for denial, suspension or revocation of a producer license as set forth in § 56-6-412;

(5) Has successfully completed the certification and training requirements adopted by the commissioner in accordance with § 56-6-1203; and

(6) Has paid any fees required by the commissioner.

56-6-1205. The provisions of this chapter and chapter 8 and any rules adopted pursuant to those chapters apply to navigators. For purposes of this section and the application of other provisions of this title, the duties of a navigator are deemed to constitute the business of insurance.

56-6-1206. The commissioner of commerce and insurance may deny, suspend or revoke the authority of a navigator certified pursuant to this section for good cause.

56-6-1207. The commissioner of commerce and insurance is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 2. This act shall take effect on July 1, 2013, the public welfare requiring it.