

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 522

An Act to amend and reenact §§ 38.2-1868.1 through 38.2-1872 of the Code of Virginia, relating to continuing education requirements for insurance agents.

[H 455]

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1868.1 through 38.2-1872 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1868.1. Proof of compliance; late filing penalty, exemption or waiver.

A. As used in this article:

"Proof of compliance" shall mean all documents, forms and fees specified by the Board for (i) filing proof of completion of Board-approved continuing education courses for the appropriate number of hours and for the appropriate content or (ii) filing proof of meeting the exemption requirements set forth in subsection B *or C* of § 38.2-1871.

"Received by the Board or its administrator" shall mean delivered into the possession of the Board or its administrator at the business address of the Board's administrator.

B. Each agent holding one or more licenses subject to the continuing education requirements of this article shall complete all continuing education course, exemption, or waiver requirements by no later than December 31 of each even-numbered year, and shall submit to the Board or its administrator proof of compliance with or exemption from the continuing education requirements in the form and manner required by the Board.

1. Such proof of compliance must be received by the Board or its administrator by the close of business on February 28 of the following year, or the next working day thereafter if February 28 falls on a weekend.

2. Agents shall be permitted to submit proof of compliance for an additional period of time, until the close of business on March 31, or the next working day thereafter if March 31 falls on a weekend, of such year subject to payment by the agent, in addition to any filing fee imposed by the Board for timely filing of proof of compliance, of a late filing penalty of \$250, payable to the Board in such manner as may be prescribed by the Board. No agent whose proof of compliance is received during the extension provided by this subdivision shall be considered in compliance with the continuing education requirements unless the filing fee and the late filing penalty described herein have been paid by the close of business on March 31, or the next working day thereafter if March 31 falls on a weekend.

3. Failure of an agent to furnish proof of compliance by ~~such~~ *the applicable date specified in subdivision B 1 or B 2 of this section* shall result in the imposition of the penalties set forth in § 38.2-1869.

C. Agents seeking a waiver of ~~continuing education~~ *some or all of the course credit* requirements for a biennium pursuant to § 38.2-1870 shall submit all documentation, forms and fees specified by the Board so as to be received by the Board or its administrator as set forth in § 38.2-1870.

D. Any agent holding one or more licenses subject to this article who fails to submit complete documentation showing proof of compliance with continuing education requirements, as well as all specified forms and fees, so as to be received by the Board or its administrator by the close of business on the date specified in subsection B or C of this section shall be deemed to be in noncompliance with the requirements of this article.

§ 38.2-1869. Failure to satisfy requirements; termination of license.

A. Failure of an agent to satisfy the requirements of this article by the last day of each even-numbered year beginning December 31, 1994, either by obtaining the continuing education credits required and furnishing evidence of same to the Board or its administrator as required by this article, or by furnishing to the Board acceptable evidence of exemption from the requirements of this article, or by obtaining, in a manner prescribed by the Board pursuant to this article, a waiver of the requirements for that biennium, shall result, subsequent to notification by the Board to the Commission, in the administrative termination of each license held by the agent for which the requirement was not satisfied. ~~An agent whose license is terminated pursuant to this section shall have the right to appeal such termination in the manner set forth by the Board pursuant to subdivision A 7 of § 38.2-1874. However, failure of an agent to provide written notice of such appeal in the form and manner required by the Board within sixty days following the date of termination of such license shall be deemed a waiver by such agent of the right to appeal such license termination.~~

1. The Board shall, on or about a date six months prior to the end of each biennium, provide a status report to each agent who has not yet fully satisfied the requirements of this article for such biennium.

Such report shall inform the agent of his current compliance status for each license held that is subject to this article, and the consequences associated with noncompliance, and shall be sent by first-class mail to such agent at his last-known residence address as shown in the Commission's records. Failure of an agent to receive such notification shall not be grounds for contesting license termination.

2. The Board shall, on or about a date forty-five days prior to the end of each biennium, provide a status report to each agent who has not yet fully satisfied the requirements of this article for such biennium. Such report shall inform the agent of his current compliance status for each license held that is subject to this article, and the consequences associated with noncompliance, and shall be sent by first-class mail to such agent at his last known residence address as shown in the Commission's records. Failure of an agent to receive such notification shall not be grounds for contesting license termination.

3. No ~~such~~ administrative termination *pursuant to this section* shall become effective until the Commission has provided at least thirty days' written notice of such impending termination to the agent by first-class mail sent to the agent at the agent's last known residence address as shown in the Commission's records. The ~~thirty-day~~ notice period shall commence on the date that the written notice is deposited in the United States mail. Failure of an agent to receive such notification shall not be grounds for contesting a license termination. Neither the Board, nor its administrator, nor the Commission shall have the power to grant an agent additional time for completing the continuing education credits required by subsection B of § 38.2-1866, *or additional time for submitting proof of compliance as required by § 38.2-1868.1, or the additional time for seeking waivers or exemption pursuant to § 38.2-1870 or § 38.2-1871. The sole purpose of such thirty-day period shall be for the agent. During a period of thirty days immediately following such notice from the Commission, the Board shall permit agents to demonstrate to the satisfaction of the Board that the agent had, in fact, submitted and the Board or its administrator had received proof of compliance on or before the filing deadlines set forth in subsection A or B of § 38.2-1868.1. The Board shall not be obligated to review or respond to any other submissions during such thirty-day period except submissions indicating that the Board's records of compliance for such agent were incorrect. Subsequent to the expiration of such thirty-day period, and prior to providing to the Commission the record of those agents who complied with the requirements of this article, the Board shall provide a reasonable additional period of time for processing of appeals pursuant to § 38.2-1874. However, failure of an agent to provide written notice of appeal in the form and manner required by the Board within forty-five days following the expiration of the thirty-day period shall be deemed a waiver by such agent of the right to appeal the determination of noncompliance.*

No more than fifteen days after the end of such ~~thirty-day~~ appeal period, the Board or its administrator shall provide to the Commission a final updated record of those agents who complied with the requirements of this article, whereupon the Commission shall administratively terminate the licenses of those agents required to submit proof of compliance and by whom proof of compliance was not submitted in a proper or timely manner. *Agents wishing to contest the Commission's action in terminating a license shall adhere to the Commission's Rules of Practice and Procedure and the Rules of the Supreme Court of Virginia.*

4. Pursuant to the requirements of subsection C of § 38.2-1817, §§ 38.2-4800 and 6.1-2.21, respectively:

a. An agent holding a license for variable life insurance and variable annuities whose life and health insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such variable life insurance and variable annuities license administratively terminated by the Commission;

b. An agent holding a license as a surplus lines broker whose property and casualty insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such surplus lines broker license administratively terminated by the Commission; and

c. An agent holding a registration as a title settlement agent whose title insurance agent license is administratively terminated for failure to satisfy the requirements of this article shall also have such registration as a title settlement agent administratively terminated by the Commission.

Any such license or registration so terminated may be applied for again after the agent has obtained, respectively, a new life and health insurance agent's license, a new property and casualty insurance agent's license, or a new title insurance agent's license and appointment, if appointment is required.

B. 1. Except as provided in subdivision 2 of this subsection, no resident ~~or nonresident~~ agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of a period of ninety days from the date of termination of such license. No resident ~~or nonresident~~ agent applying for a license after termination of a previous license pursuant to this section shall be issued a license unless the agent has successfully completed, subsequent to the biennium, any study course required by § 38.2-1816 and the examination required by § 38.2-1817. In such an event, these study course and examination requirements shall not be subject to waiver under any circumstances, including those set forth in §§ 38.2-1816, 38.2-1817, 38.2-1836, and 38.2-1845.

2. A resident ~~or nonresident~~ agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of the ninety-day period

provided in this subsection, provided that such agent (i) pays to the Commission, in addition to any license processing fees, an administrative penalty of \$1,000, which shall be paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance and (ii) has successfully completed, subsequent to the end of the biennium, any study course required by § 38.2-1816 and the examination required by § 38.2-1817. In such an event, the study course and examination requirements shall not be subject to waiver under any circumstances, including those set forth in §§ 38.2-1816, 38.2-1817, 38.2-1836, and 38.2-1845.

3. *No nonresident agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of a period of ninety days from the date of termination of such license. However, a nonresident agent whose license has been terminated under the terms of this section shall be permitted to make application for a new license prior to the expiration of the ninety-day period provided in this subsection, provided that such agent pays to the Commission, in addition to any license processing fees, an administrative penalty of \$1,000, which shall be paid into the state treasury and credited to the fund for the maintenance of the Bureau of Insurance. Nonresident agents who reside in states requiring continuing education for their resident insurance producers, and who furnish evidence in the form and manner required by the Commission of their compliance with such continuing education requirements in their state of residence shall not be required to complete any study course required by § 38.2-1816 nor the examination required by § 38.2-1817, provided that the insurance supervisory official of the nonresident agent's state of residence will grant similar exemptions to Virginia residents seeking license renewal or reissue in such state. Nonresident agents who reside in states that do not require continuing education for their resident insurance producers, or that do not grant similar exemptions to Virginia residents, shall be required to satisfy all requirements of subdivision B 1 or B 2 of this section to the same extent as required of Virginia resident agents.*

C. A resident or nonresident agent who voluntarily surrenders his license without prejudice during a biennium or within 120 days after the end of a biennium, and who has not provided proof of compliance for such biennium, shall not be permitted to apply for a new license of the same type until such agent has complied with the requirements of subsection B of this section. Further, if such agent chooses not to apply for a new license under the terms of subdivision B 2 or B 3 of this section, such agent shall not be permitted to obtain a new license of the same type until the expiration of the same ninety-day period applicable to agents whose licenses are terminated pursuant to subsection A of this section.

D. A resident agent whose license terminates because, within 180 days prior to or within 120 days after the end of a biennium, such agent moves his residence to another state, and who had not, prior to such relocation, provided proof of compliance for such biennium shall not be permitted to apply for a new license of the same type until such agent has complied with the requirements of subdivisions B 1 and B 2 of this section. Further, if the agent chooses not to apply for a new license under the terms of subdivision B 2 of this section, such agent shall not be permitted to obtain a new license of the same type until the expiration of the same ninety-day period applicable to agents whose licenses are terminated pursuant to subsection A of this section.

E. An insurance consultant who fails to renew his consultant license by the date specified in § 38.2-1840, but who obtains a new insurance consultant license within twelve months following such renewal date shall be treated, for purposes of determining exemption from continuing education requirements pursuant to § 38.2-1871, as if such insurance consultant license had been renewed in a timely manner.

§ 38.2-1870. Waiver of continuing education requirements.

The requirements of this article *pertaining to the number of course credits required* may be waived, *in whole or in part*, by the Board for good cause shown. As used herein, "good cause" includes long-term illness or incapacity and such other emergency situations as may be determined by the Board as preventing the agent from satisfying the continuing education credit hours required by this article. Requests for waivers of continuing education requirements shall be made in a form and manner prescribed by the Board; ~~and. Requests for waiver of all course credit requirements shall be submitted to the Board or its administrator no later than ninety days prior to the end of the biennium for which such waiver is requested. In the event that the long-term illness, incapacity, or such other emergency situation referenced above manifests itself within 120 days prior to the end of the biennium, the agent shall be permitted to request a waiver by submitting such request to the Board, in the form and manner prescribed by the Board, provided such request is received by the Board no later than thirty days prior to the end of the biennium for which such waiver is requested requests for waivers of some but not all of the course credit requirements shall be submitted to the Board or its administrator no later than the applicable submission deadline set forth in § 38.2-1868.1.~~ The Board shall approve or disapprove the waiver request within thirty days of receipt thereof, and shall provide written notice of its decision to the applicant for waiver within five days of rendering its decision. Any waiver granted pursuant to this section shall be valid only for the biennium for which waiver application was made.

§ 38.2-1871. Licensees exempt from continuing education requirements of article.

A. The following licensees are exempt from fulfilling the continuing education credit requirements set forth in this article for the biennium in which such licenses are issued:

1. Resident agents who have successfully passed the required examination for a license during a biennium pursuant to § 38.2-1817 will be exempt from meeting the continuing education requirements for that license for that biennium; and

2. Resident or nonresident agents who have been issued a license during the last twelve months of the biennium, and who are not otherwise exempt from the continuing education requirements for that license, shall have such requirements waived for that license for that biennium.

B. The following licensees are exempt from fulfilling the continuing education credit requirements set forth in this article:

1. Life and health insurance consultants who are licensed as life and health agents and who satisfy the continuing education requirements needed for continuation of their life and health agent license; *and*

2. Property and casualty insurance consultants who are also licensed as property and casualty agents and who satisfy the continuing education requirements needed for continuation of their property and casualty agent license;

3. ~~Agents who will have attained at least the age of sixty-five by the end of a biennium with respect to any license that they have held continuously for at least twenty years, subject to submission of a request for permanent exemption prior to the end of a biennium during which they satisfy the exemption requirements, in the form and manner required by the Board.~~

C. The following licensees may request exemptions from continuing education requirements, but shall not be exempt unless such exemption is approved by the Board after submission of an exemption request in the form and manner required by the Board.

1. An agent who can prove, in the form and manner required by the Board, that he has attained or will attain at least the age of sixty-five by the end of a biennium may apply for a permanent exemption with respect to one or more licenses held by such agent, subject to submission of proof of the following, in a form and manner required by the Board:

a. A resident or nonresident agent must demonstrate that the agent has held any combination of resident or nonresident Virginia licenses of equivalent type continuously for at least twenty years; or

b. A resident agent who will have held a Virginia resident agent license continuously for no fewer than four years by the end of the biennium must furnish proof of having held equivalent license authority continuously in other states for a period that, when combined with the number of years of resident licensure in Virginia, equals at least twenty years; and

4. 2. Nonresident agents who reside in states requiring continuing education for their resident insurance producers, and who furnish evidence in the form and manner required by the Board of their compliance with such continuing education requirements in their state of residence, provided that the insurance supervisory official of the nonresident agent's state of residence will grant similar exemptions to Virginia residents who have satisfied Virginia's continuing education requirements.

§ 38.2-1872. Administrative duties of Board; transfer to outside administrator.

A. The Board shall have the authority to transfer all or part of its administrative duties to an outside administrator. The performance of the administrator shall be confirmed at least annually by the Board and appropriate corrective action shall be taken for any deficiencies. Such administrator shall maintain records reflecting the continuing education status of all licensed agents reporting credits to it, subject to the requirements of this article.

B. The Board or its administrator shall, *following the end of each biennium and on a date and in a form acceptable to the Commission but in no event later than May 30 fifteen days following the end of each biennium the appeal period provided by the Board pursuant to § 38.2-1869*, provide to the Commission a report of all licensees who satisfied the requirements of this article for such biennium. The Board or its administrator shall not, however, be required to include in such report those licensees exempt pursuant to subsection A of § 38.2-1871. The administrative termination of licenses, as required by subdivision A 3 of § 38.2-1869 shall be carried out by operation of law.

C. The Board or its administrator shall be provided such information from the Commission's records as the Board may reasonably require in order to carry out its duties, including, but not limited to, (i) requesting and receiving from the Commission computer-generated reports, mailing labels, or other computer-generated information containing the names, license identification numbers, license types, and residence addresses of all licensees subject to the requirements of this article; and (ii) direct on-line "inquiry only" access to such automated system data as the Commission may deem appropriate.