

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 296

*An Act to amend and reenact §§ 38.2-1834.1 and 38.2-1869, as it shall become effective, of the Code of Virginia, relating to insurance agents; termination.*

[H 1195]

Approved April 1, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-1834.1 and 38.2-1869, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-1834.1. Notification to Commission of termination; notice to agent; immunities; confidentiality; penalties.

A. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with an agent or other licensee under this chapter shall notify the Commission within thirty calendar days following the effective date of the termination, using a format prescribed by the Commission, if the reason for termination is one of the reasons set forth in § 38.2-1831 or the insurer has knowledge the agent was found by a court, government body, or legally authorized self-regulatory organization authorized by law to have engaged in any of the activities in §§ 38.2-1831, 38.2-1843, 38.2-1356 or § 38.2-1363. The propriety of any such termination for cause shall be certified in writing by an officer or authorized representative of the insurer or agent terminating the relationship. Upon the written request of the Commission, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the agent or other licensee.

B. The insurer or the authorized representative of the insurer shall promptly notify the Commission in a format acceptable to the Commission if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commission in accordance with subsection A had the insurer then known of its existence.

C. 1. Within fifteen calendar days after making the notification required by subsections A and B, the insurer shall mail a copy of the notification to the agent at his last known address pursuant to the insurer's records. If the agent is terminated for cause for any of the reasons listed in § 38.2-1831, the insurer shall provide a copy of the notification to the agent at his last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

2. Within thirty calendar days after the agent has received the original or additional notification, the agent may file written comments concerning the substance of the notification with the Commission in the form and manner required by the Commission. The agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the Commission's file and accompany every copy of a report distributed or disclosed for any reason about the agent as permitted under subsection D.

D. 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the Commission, authorized representatives of the Commission, the NAIC, its affiliates or subsidiaries, or state, federal, and international law-enforcement authorities shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Commission, from an insurer or agent, or a statement by a terminating insurer or agent to an insurer or agent limited solely and exclusively to whether a termination for cause under subsection A was reported to the Commission, provided that the propriety of any termination for cause under subsection A is certified in writing, pursuant to subsection A of this section, by an officer or authorized representative of the insurer or agent terminating the relationship.

2. In any action brought against a person that may have immunity under subdivision 1 for making any statement required by this section or providing any information relating to any statement that may be requested by the Commission, the party bringing the action shall plead specifically in any allegation that subdivision 1 does not apply because the person making the statement or providing the information did so with actual malice.

3. Subdivision 1 or 2 shall not abrogate or modify any existing statutory or common law privileges or immunities.

E. 1. Any documents, materials or other information in the control or possession of the Commission that is furnished by an insurer, agent or an employee thereof acting on behalf of the insurer or agent, or obtained by the Commission in an investigation pursuant to this ~~section~~ chapter shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be

subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commission is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

2. Neither the Commission nor any person who received documents, materials or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision 1.

3. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

a. May share documents, material or other information, including the confidential and privileged documents, materials or information subject to subdivision 1, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information.

b. May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC, its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

4. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subdivision 3.

5. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1 to a database or other clearinghouse service maintained by the NAIC, its affiliates or subsidiaries of the NAIC.

F. An insurer, the authorized representative of the insurer, or agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and an opportunity to be heard, have its license or certificate of authority suspended or revoked and may be fined in accordance with Chapter 2 (§ 38.2-200 et seq.) of this title.

§ 38.2-1869. (Effective September 1, 2002) 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.

B. 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.

C. The Board shall, no later than forty-five calendar days and no sooner than sixty calendar 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.

D. No administrative termination pursuant to this section shall become effective until the Commission has provided at least thirty calendar 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 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 § 38.2-1866, or additional time for submitting proof of compliance as required by § 38.2-1868.1, or additional time for seeking waivers or exemption pursuant to § 38.2-1870 or § 38.2-1871. During a period of thirty calendar 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 § 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 calendar 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 calendar days after the end of such 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. *Failure by the agent to initiate such contest within sixty calendar days following the date of license termination shall be deemed a waiver by the agent of the right to contest such license termination.*

E. Pursuant to the requirements of subsection C of § 38.2-1815, §§ 38.2-4800 and 6.1-2.21, respectively:

1. An agent holding a license for variable life insurance and variable annuities whose life and annuities 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;

2. 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

3. 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 annuities 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.

F. 1. Except as provided in subdivision 2 of this subsection, no resident 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 calendar days from the date of termination of such license. No resident 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 end of the biennium, the examination required by § 38.2-1817. In such an event, the examination requirements shall not be subject to waiver under any circumstances, including those set forth in § 38.2-1817.

2. A resident 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, the examination required by § 38.2-1817. In such an event, the examination requirements shall not be subject to waiver under any circumstances, including those set forth in § 38.2-1817.

3. A nonresident agent whose license has been terminated under the terms of this section shall be permitted to make application for new licenses prior to the expiration of the ninety-calendar-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 furnish evidence in the form and manner required by the Commission of their good standing in their state of residence shall not be required to complete 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.

G. A resident or nonresident agent who voluntarily surrenders his license without prejudice during a biennium or ~~within 120 calendar days after the end of a biennium~~ *prior to the expiration of the appeal period for that biennium as described in subsection D*, 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 F of this section. Further, if such agent chooses not to apply for a new license under the terms of subdivision F 2 or F 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.

H. A resident agent whose license terminates because, within 180 calendar days prior to ~~or within 120 calendar days after~~ the end of a biennium, *or prior to the expiration of the appeal period for that biennium as described in subsection D*, 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 F 1 and F 2 of this section. Further, if the agent chooses not to apply for a new license under the terms of subdivision F 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.

I. An insurance consultant who fails to renew his insurance 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.

**2. That the provisions of this act that amend § 38.2-1869 of the Code of Virginia shall become effective on September 1, 2002.**