

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 589

An Act to amend and reenact §§ 38.2-1868.1 and 38.2-1869 of the Code of Virginia, relating to the licensure of insurance agents; continuing education requirements.

[H 261]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1868.1 and 38.2-1869 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1868.1. Proof of compliance; late filing penalties, 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.

C. 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.

D. 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.

After the March 31 deadline, agents who have obtained the requisite continuing education course credits in the time permitted for obtaining such credits, but who have failed to submit proof of compliance, shall be provided a final opportunity to submit the proof of compliance after the Commission has issued notice of impending termination of their licenses, if such agents submit proof of compliance and pay the filing fees and the \$500 penalty as provided in subdivision D 1 of § 38.2-1869 within the 30 calendar day notice period provided pursuant to such subdivision.

E. Failure of an agent to furnish proof of compliance by the applicable date specified in subsection C or D of this section shall result in the imposition of the penalties set forth in § 38.2-1869.

F. Agents seeking a waiver of 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.

G. 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 dates described in 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~~ within the time period specified in § 38.2-1868.1, 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 45 calendar days and no sooner than 60 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. 1. No administrative termination pursuant to this section shall become effective until the Commission has provided ~~at least thirty~~ 30 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 *and, if the 30th calendar day falls on a Saturday or Sunday, the end of the notice period shall be extended to the next business day.* Failure of an agent to receive such notification shall not be grounds for contesting a license termination. *Any agent who obtained the required number of continuing education credits in the time permitted for obtaining such credits shall be permitted to submit proof of compliance during the 30 calendar day notice period if the agent pays, in addition to the filing fee established by the Board for submission of proof of compliance, a penalty of \$500 to the Board in the manner prescribed by the Board; provided that such payment and submission of proof of compliance shall be received by the Board or its administrator, in the form and manner required by the Board, prior to the end of the 30 calendar day notice period.*

2. 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 the~~ period of ~~thirty~~ 30 calendar days immediately following such notice from the Commission, the Board shall permit agents *either to demonstrate to the satisfaction of the Board that the agent had, in fact, timely 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 or to present proof of compliance and payment of the prescribed penalty and filing fee in accordance with the procedure established in subdivision 1 of this subsection.*

~~The~~ 3. During the 30 calendar day notice period, 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 except for submissions that prove that the records of the Board or its administrator are incorrect and late filing submissions permitted pursuant to subdivision 1 of this subsection.~~ Subsequent to the expiration of such 30-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~~ 45 calendar days following the expiration of the 30-day period shall be deemed a waiver by such agent of the right to appeal the determination of noncompliance.

4. No more than ~~fifteen~~ 15 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~~ 30 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, §§ 38.2-4806 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~~ *or licenses have* been terminated under the terms of this section shall be permitted to make application for a new ~~license~~ *licenses* prior to the expiration of the 90-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~~ *or licenses have* been terminated under the terms of this section shall be permitted to make application for new licenses prior to the expiration of the 90 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 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 90-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 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 90-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 12 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.