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SENATE BILL NO. 853

Offered January 16, 2018

A *BILL to amend and reenact §§ 38.2-1868.1, 38.2-1869, 38.2-1871, and 38.2-1872 of the Code of Virginia, relating to insurance agent licensing; continuing education requirements.*

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1868.1, 38.2-1869, 38.2-1871, and 38.2-1872 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1868.1. Proof of compliance; 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 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 by no later than ~~November 30~~ *December 31*, or the next working day *thereafter* if ~~November 30~~ *December 31* falls on a weekend, of each even-numbered year.

C. ~~After November 30, agents who have failed to complete all continuing education course, exemption, or waiver requirements or have failed to pay any required fees shall be provided a final opportunity to complete such requirements, provided proof of compliance is received by the Board or its administrator by December 31, or the next working day thereafter if December 31 falls on a weekend.~~

~~D. Agents who have completed all continuing education course ~~or~~, exemption, or waiver requirements by December 31 but failed to demonstrate proof of compliance by failing to pay the filing fee imposed by the Board shall be permitted to pay such filing fee for an additional period of time, until the close of business on January 31, or the next working day thereafter if January 31 falls on a weekend, of the following year, but only if the agent pays, in addition to the filing fee, a late filing penalty of \$100, payable to the Board in such manner as may be prescribed by the Board. No agent whose proof of compliance is received during this final period shall be considered in compliance with the continuing education requirements unless the filing fee and the late filing penalty described herein are paid by the close of business on January 31, or the next working day thereafter if January 31 falls on a weekend.~~

~~E. D. Failure of an agent to furnish proof of compliance by the applicable date *dates* specified in subsection *subsections* B, and C ~~or D~~ of this section and pay any applicable filing penalty shall result in license termination as set forth in § 38.2-1869.~~

~~F. E. 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 no later than the deadlines set forth in subsection *subsections* B ~~or~~ and C of this section.~~

~~G. F. 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.~~

~~H. G. All fees specified by the Board shall be nonrefundable once received by the Board or its administrator, except that duplicate payments may be refunded.~~

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

A. Failure of an agent to satisfy the requirements of this article 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

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SB853

59 prescribed by the Board pursuant to this article, a waiver of the requirements for that biennium, shall
60 result, subsequent to notification by the Board to the Commission, in the administrative termination of
61 each license held by the agent for which the requirement was not satisfied.

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

68 C. No administrative termination pursuant to this section shall become effective until the Commission
69 has provided 30 calendar days' written notice of such impending termination to the agent by first-class
70 mail sent to the agent at the agent's last known residence address as shown in the Commission's records.
71 The notice period shall commence on the date that the written notice is deposited in the United States
72 mail and, if the 30th calendar day falls on a weekend, the end of the notice period shall be extended to
73 the next business day. Failure of an agent to receive such notification shall not be grounds for contesting
74 a license termination. Any agent who obtained the required number of continuing education credits in
75 the time permitted for obtaining such credits and paid any required fees shall be permitted to submit
76 proof of compliance during the 30 calendar day notice period.

77 D. Neither the Board, its administrator, nor the Commission shall have the power to grant an agent
78 additional time for completing the continuing education credits required by § 38.2-1866, or additional
79 time for submitting proof of compliance as required by § 38.2-1868.1, or additional time for seeking
80 waivers or exemption pursuant to § 38.2-1870 or 38.2-1871.

81 E. ~~During the period set forth in subsection C of § 38.2-1868.1, the Board shall permit agents either~~
82 ~~to demonstrate to the satisfaction of the Board that the agent had, in fact, timely submitted and the~~
83 ~~Board or its administrator had received proof of compliance on or before the filing deadlines set forth in~~
84 ~~§ 38.2-1868.1 or to complete all continuing education course, exemption, or waiver requirements and~~
85 ~~present proof of compliance.~~

86 F. ~~During the period set forth in subsection C of § 38.2-1868.1, the Board shall not be obligated to~~
87 ~~review or respond to any other submissions except for submissions that prove that the records of the~~
88 ~~Board or its administrator are incorrect and late filing submissions permitted pursuant to subsection C of~~
89 ~~§ 38.2-1868.1. Subsequent to the expiration of such period~~ *Immediately following December 31 of each*
90 *even-numbered year, the Board shall provide a reasonable additional period of time for processing of*
91 *appeals pursuant to § 38.2-1874. However, failure of an agent to provide written notice of appeal in the*
92 *form and manner required by the Board within 30 calendar days following the expiration of the period*
93 *set forth in subsection C of § 38.2-1868.1 by the close of business on January 31, or the next working*
94 *day thereafter if January 31 falls on a weekend, of the following year shall be deemed a waiver by such*
95 *agent of the right to appeal the determination of noncompliance.*

96 ~~G. F.~~ No more than 15 calendar days after the end of ~~such the~~ appeal period *set forth in subsection*
97 *E*, the Board or its administrator shall provide to the Commission a final updated record of those agents
98 who complied with the requirements of this article, whereupon the Commission shall administratively
99 terminate the licenses of those agents required to submit proof of compliance and by whom proof of
100 compliance was not submitted in a proper or timely manner. Agents wishing to contest the
101 Commission's action in terminating a license shall adhere to the Commission's Rules of Practice and
102 Procedure (5 VAC 5-20-10 et seq.) and the Rules of the Supreme Court of Virginia. Failure by the
103 agent to initiate such contest within 30 calendar days following the date the license was administratively
104 terminated shall be deemed a waiver by the agent of the right to contest such license termination.

105 H. Pursuant to the requirements of subsection C of § 38.2-1815, §§ ~~38.2-4806~~ *38.2-1857.1*, and
106 *55-525.19*, respectively:

107 1. A resident variable contract agent whose life and annuities insurance agent license is
108 administratively terminated for failure to satisfy the requirements of this article shall also have such
109 variable contract license administratively terminated by the Commission;

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

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

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

119 I. H. A resident agent whose license or licenses have been terminated under the terms of this section
120 shall be permitted to make application for new licenses, provided that such 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.

~~J. I.~~ A nonresident agent whose license or licenses have been terminated under the terms of this section and who is in good standing in the person's state of residence shall be permitted to make application for new licenses in the manner prescribed by § 38.2-1836.

~~K. J.~~ 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 ~~F~~ E, 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 ~~H~~ or I ~~or J~~.

~~L. K.~~ 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 ~~F~~ E, 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 subsection ~~J~~ I.

~~M. L.~~ 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.

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

A. Resident or nonresident agents who have been issued a license during the last ~~twelve~~ 12 months of the biennium in which such licenses are issued, and who are not otherwise exempt from the continuing education requirements for that license, shall be exempt from fulfilling the continuing education credit requirements set forth in this article 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 also licensed both as life and annuities insurance agents and as health agents and who satisfy the continuing education requirements needed for continuation of their life and annuities and health agent licenses; ~~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; ~~;~~

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 and without interruption for at least the twenty years immediately preceding the end of the biennium; ~~or~~

b. A resident agent who will have held a Virginia resident agent license continuously and without interruption for no fewer than the immediately preceding four years by the end of the biennium must furnish proof of having held equivalent license authority continuously and without interruption in other states for a period that, when combined with the number of years of resident licensure in Virginia, equals at least twenty continuous and uninterrupted years immediately preceding the end of the biennium; ~~or~~

c. A resident agent who will have held a Virginia resident license continuously and without interruption for no fewer than the immediately preceding four years by the end of the biennium shall furnish proof (i) of having held equivalent license authority in Virginia for at least twenty of the preceding thirty years; and (ii) that any unlicensed period was not the result of a license revocation or termination by the Commission pursuant to § 38.2-1832 or § 38.2-1869; ~~and~~

2. 3. Nonresident agents who furnish evidence in the form and manner required by the Board of their current good standing in their home state, provided that the insurance supervisory official of the nonresident agent's home state will grant similar exemptions to Virginia residents; ~~and~~

4. Agents who have applied for and received a permanent exemption from the continuing education credit requirements set forth in this article by December 31, 2018.

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

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

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

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

200 **2. That the provisions of this act shall become effective on January 1, 2019.**