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## SENATE BILL NO. 1747

Offered January 17, 2019

A *BILL to amend and reenact §§ 38.2-1867, 38.2-1868.1, 38.2-1869, 38.2-1871, 38.2-1872, and 38.2-1873 of the Code of Virginia and to repeal § 38.2-1870 of the Code of Virginia, relating to insurance agents; continuing education requirements.*

Patron—Chafin

Referred to Committee on Commerce and Labor

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

**1. That §§ 38.2-1867, 38.2-1868.1, 38.2-1869, 38.2-1871, 38.2-1872, and 38.2-1873 of the Code of Virginia are amended and reenacted as follows:**

**§ 38.2-1867. Insurance continuing education board; approval of credits.**

A. An insurance continuing education board, hereinafter called the Board, appointed by the Commission, shall approve all continuing education instructors, ~~continuing education courses and~~ programs of instruction, ~~to include and courses, including~~ technical courses or agency management and operations courses, ~~and shall evaluate credit hours for all programs or courses offered.~~ The Board shall establish and monitor standards for the education of insurance agents; ~~approve courses including evaluating credit hours for all courses or programs offered,~~ and set minimum requirements for course instructors. The Board shall have the authority to disapprove or withdraw approval of course sponsors, courses, or course instructors when the established standards are not satisfied, or where such standards have been violated.

B. The number of credits for each self-study course, correspondence course, or program of classroom instruction shall be determined in a manner prescribed by the Board. However, for an approved classroom course, a credit hour shall be equivalent to a classroom hour providing at least 50 minutes of continuous instruction or participation. No credits shall be granted for approved classroom courses unless notice to the Board is accompanied by proof of attendance by the course provider. No credits shall be granted for any correspondence or self-study course that does not include a test of the subject matter which shall be successfully completed by each agent requesting credit. The Board shall have the right to review and approve or disapprove the proposed test as part of the course approval process.

C. An instructor of an approved continuing education course shall be eligible to receive the same number of credits as a person enrolled in the course for the purpose of meeting the *continuing education course requirements of this article*. However, agents and instructors may apply credits for attending or teaching the same course only once during ~~any biennium~~ *the two-year period set forth in subsection B of § 38.2-1868.1.*

D. Excess credit hours accumulated during ~~any biennium~~ *the two-year period set forth in subsection B of § 38.2-1868.1* may be carried forward to the next biennium only.

E. Members of the Board shall be appointed ~~by the Commission~~ as follows:

1. One ~~representative from~~ *active member of* the Independent Insurance Agents of Virginia, ~~as recommended by the Independent Insurance Agents of Virginia;~~

2. One ~~representative from~~ *active member of* the Professional Insurance Agents of Virginia and the District of Columbia, ~~as recommended by the Professional Insurance Agents of Virginia and the District of Columbia;~~

3. One ~~representative from~~ *active member of* the Virginia Association of Insurance and Financial Advisors, ~~as recommended by the Virginia Association of Insurance and Financial Advisors;~~

4. One ~~representative of~~ *a licensed property and casualty insurance company writing business in the Commonwealth that operates through an exclusive agency force active member of the Virginia Land Title Association, as recommended by the Virginia Land Title Association;*

5. One ~~representative of~~ *a licensed life and health insurance company writing business in the Commonwealth that operates through an exclusive agency force active member of the Virginia Association of Health Underwriters, as recommended by the Virginia Association of Health Underwriters;*

6. One ~~representative of~~ *a licensed property and casualty insurance company domiciled and writing business in the Commonwealth* *Three representatives of the property and casualty insurance industry;*

7. One ~~representative of~~ *a licensed life and health insurance company domiciled and writing business in the Commonwealth* *Three representatives of the life and health insurance industry; and*

8. One ~~representative of~~ *a licensed life and health insurance company writing business in the Commonwealth;*

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59 9. One representative of a licensed property and casualty insurance company writing business in the  
60 Commonwealth;

61 10. One representative from the Virginia Land Title Association;

62 11. One representative from the adult education or higher education field; and

63 12. One representative from the Virginia Association of Health Underwriters.

64 F. On and after July 1, 1996, no person shall be appointed to serve as a member of the Board if,  
65 in the opinion of the Commission, other than as an incidental part of or unrelated to such person's  
66 employment, such person (i) prepares, submits for approval, or teaches insurance continuing education  
67 courses in Virginia or in any other jurisdiction, other than as an incidental part of such person's  
68 employment, or (ii) no longer meets the criteria on which the original appointment to the Board was  
69 based pursuant to subsection E.

70 G. No meeting of the Board or any subcommittee of the Board shall be held unless timely notice of  
71 such meeting has been provided to the Commission's Bureau of Insurance. At any such meeting of the  
72 Board or any subcommittee of the Board, one or more representatives from the Bureau of Insurance  
73 shall be permitted to attend and to participate in such meeting, except that such Bureau of Insurance  
74 representative or representatives shall not have the right to vote on any matters before the Board.

75 H. Actions of the Board shall be exempt from the application of the Administrative Process Act  
76 (§ 2.2-4000 et seq.).

77 **§ 38.2-1868.1. Proof of compliance with continuing education course requirements; waivers.**

78 A. As used in this article:

79 "Proof of compliance" shall mean means all fees prescribed by the Board and all documents, and  
80 forms and fees specified by the Board for (i) filing proof of demonstrating completion of  
81 Board-approved continuing education courses relevant to the license held and for the appropriate  
82 required number of hours and for the appropriate content or (ii) filing proof of meeting the exemption  
83 requirements set forth in subsection B of § 38.2-1871.

84 "Received by the Board or its administrator" shall mean means delivered into the possession of the  
85 Board or its administrator at the business address of the Board's administrator in a form and manner  
86 prescribed by the Board.

87 B. Each agent holding one or more licenses subject to the continuing education course requirements  
88 of this article shall complete all continuing education course, exemption, or waiver requirements and  
89 shall submit to the Board or its administrator proof of compliance with or exemption from the  
90 continuing education such requirements in the form and manner required by the Board by no later than  
91 December 31, or the next working day thereafter if December 31 falls on a weekend, of each  
92 even-numbered year biennially, based on the agent's month and year of birth. An agent born in an  
93 even-numbered year shall complete all continuing education course or waiver requirements and shall  
94 submit proof of compliance by the end of the agent's birth month in even-numbered years. An agent  
95 born in an odd-numbered year shall complete all continuing education course or waiver requirements  
96 and shall submit proof of compliance by the end of the agent's birth month in odd-numbered years.

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

106 D. Failure of an agent to furnish proof of compliance by the dates specified in subsections B and C  
107 and pay any applicable filing penalty shall result in license termination as set forth in § 38.2-1869.

108 E. Agents seeking a waiver of some or all of the course credit requirements for a biennium pursuant  
109 to § 38.2-1870 shall submit all documentation, forms, and fees specified by the Board so as to be  
110 received by the Board or its administrator no later than the deadlines set forth in subsections B and C.

111 F. Any agent holding one or more licenses subject to this article who fails to submit complete  
112 documentation showing proof of compliance with continuing education requirements, as well as all  
113 specified forms and fees, so as to be received by the Board or its administrator by the close of business  
114 on the dates described in this section shall be deemed to be in noncompliance with the requirements of  
115 this article.

116 G. A licensed agent who is unable to comply with the continuing education course requirements of  
117 this article due to military service or other extenuating circumstances including long-term illness or  
118 incapacity may request a waiver of such requirements. Requests for waivers of continuing education  
119 course requirements shall be made in a form and manner prescribed by the Board. Agents seeking a  
120 waiver of some or all of the continuing education course requirements 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 last day of the two-year period set forth in subsection B. After the two-year period, agents who have failed to complete the continuing education course requirements may request a waiver from the reinstatement requirements set forth in subsection F of § 38.2-1869 within the 12-month reinstatement period described therein. The Board shall approve or disapprove the waiver request within 30 days of receipt thereof and shall provide written notice of its decision to the waiver applicant within five days of rendering its decision. Any waiver granted pursuant to this subsection shall be valid only for the biennium for which waiver application was made.

D. All fees specified by the Board shall be nonrefundable once received by the Commission, the Board, or its the Board's 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 complete all continuing education course or waiver requirements of this article within the time period specified, pay any fee imposed by the Board, or otherwise furnish proof of compliance during the two-year period set forth in subsection B of § 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, or to complete the license renewal requirements, shall result in the termination of each license held by the agent for which the requirement was requirements of this article were 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. No administrative termination pursuant to this section shall become effective until the Commission has provided 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 weekend, 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 and paid any required fees shall be permitted to submit proof of compliance during the 30 calendar day notice period.

D. C. Neither the Board, 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.

E. Immediately following December 31 of each even-numbered year, the Board shall provide a reasonable period of time for processing of appeals pursuant to § 38.2-1874. D. An agent whose license has been terminated for failure to satisfy the continuing education course requirements of this article may appeal the determination of noncompliance to the Board. However, failure of an agent to provide written notice of appeal in the form and manner required prescribed by the Board by the close of business on January 31, or the next working day thereafter if January 31 falls on a weekend, of the following year within 30 calendar days following expiration of the two-year period set forth in subsection B of § 38.2-1868.1 shall be deemed a waiver by such agent of the right to appeal the determination of noncompliance with the Board.

F. No more than 15 calendar days after the end of the appeal period set forth in subsection E, 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 (5VAC5-20-10 et seq.) and the Rules of the Supreme Court of Virginia. Failure by the agent to initiate such contest within 30 calendar days following the date the license was administratively terminated shall be deemed a waiver by the agent of the right to contest such license termination.

G. E. Pursuant to the requirements of subsection C of § 38.2-1815, §§ 38.2-1857.1, and 55-525.19, respectively:

1. A resident variable contract agent whose life and annuities insurance agent license is

182 ~~administratively~~ terminated for failure to satisfy the requirements of this article shall also have such  
183 variable contract license ~~administratively~~ terminated by the Commission;

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

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

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

193 H. A resident agent whose license or licenses have been terminated under the terms of this section  
194 shall be permitted to make application for new licenses, provided that such agent has successfully  
195 completed, subsequent to the end of the biennium, the examination required by ~~§ 38.2-1817~~. In such an  
196 event, the examination requirements shall not be subject to waiver under any circumstances, including  
197 those set forth in ~~§ 38.2-1817~~.

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

201 J. A resident or nonresident agent who voluntarily surrenders his license without prejudice during a  
202 biennium or prior to the expiration of the appeal period for that biennium as described in subsection E,  
203 and who has not provided proof of compliance for such biennium, shall not be permitted to apply for a  
204 new license of the same type until such agent has complied with the requirements of subsection H or I.

205 K. A resident agent whose license terminates because, within 180 calendar days prior to the end of a  
206 biennium, or prior to the expiration of the appeal period for that biennium as described in subsection E,  
207 such agent moves his residence to another state, and who had not, prior to such relocation, provided  
208 proof of compliance for such biennium shall not be permitted to apply for a new license of the same  
209 type until such agent has complied with the requirements of subsection I.

210 L. F. An insurance consultant who fails to renew his insurance consultant license by the date  
211 specified in § 38.2-1840, but who obtains a new *reinstates his* insurance consultant license within 12  
212 months following such renewal date shall be treated, for purposes of determining exemption from  
213 continuing education *course* requirements pursuant to § 38.2-1871, as if such insurance consultant  
214 license had been renewed in a timely manner.

215 **§ 38.2-1871. Licensees not subject to the continuing education course requirements of article.**

216 A. Resident *A resident* or nonresident agents *agent* who have *has* been issued a license during the  
217 last ~~12~~ *13* months of the biennium in which such licenses are issued, and who are not otherwise exempt  
218 from the continuing education requirements for that license, *two-year period set forth in subsection B of*  
219 *§ 38.2-1868.1* shall be exempt from fulfilling the continuing education ~~credit~~ *course* requirements set  
220 forth in this article for that license for that biennium.

221 B. The following licensees are ~~exempt from fulfilling~~ *not subject to* the continuing education ~~credit~~  
222 *course* requirements set forth in this article:

223 1. Life and health insurance consultants who are also licensed both as life and annuities insurance  
224 agents and as health agents and who satisfy the continuing education *course* requirements needed for  
225 continuation of their life and annuities and health agent licenses;

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

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

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

234 **§ 38.2-1872. Administrative duties of Board; transfer to outside administrator.**

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

240 B. The Board or its administrator shall following the end of each biennium and on a date and in a  
241 form acceptable to the Commission but in no event later than fifteen calendar days following the end of  
242 the appeal period provided by the Board pursuant to ~~§ 38.2-1869~~ provide to the Commission a report of  
243 all licensees who satisfied the requirements of this article for such biennium. The Board or its

244 administrator shall not, however, be required to include in such report those licensees exempt pursuant  
245 to subsection A of § 38.2-1871. The administrative termination of licenses, as required by § 38.2-1869,  
246 shall be carried out by operation of law.

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

253 **§ 38.2-1873. Continuing insurance education fees.**

254 The continuing insurance education program established by this article shall be self-supporting, and  
255 any costs incurred by the *Board, its members, its administrator, or the Commission, administrator, or*  
256 *the Board or its members, including legal fees and other legal expenses incurred during or as a result of*  
257 *in connection with the good faith execution of their respective duties, pertaining to the continuing*  
258 *education of insurance agents licensed in the Commonwealth* shall be borne by the continuing insurance  
259 education fees paid by agents, course sponsors, and course instructors, which fees, except for duplicate  
260 payments, shall be nonrefundable upon receipt.

261 **2. That § 38.2-1870 of the Code of Virginia is repealed.**

262 **3. That the provisions of this act shall become effective on January 1, 2021.**