

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 159

An Act to amend and reenact §§ 38.2-1866, 38.2-1867, 38.2-1869, 38.2-1870, 38.2-1871, 38.2-1872, 38.2-1873, and 38.2-1874 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 18 of Title 38.2 a section numbered 38.2-1868.1; and to repeal § 38.2-1868 of the Code of Virginia, relating to insurance; continuing education requirements for insurance agents.

[S 506]

Approved March 8, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1866, 38.2-1867, 38.2-1869, 38.2-1870, 38.2-1871, 38.2-1872, 38.2-1873, and 38.2-1874 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 18 of Title 38.2 a section numbered 38.2-1868.1 as follows:

§ 38.2-1866. Continuing education requirements.

A. Every resident and nonresident (i) insurance consultant, (ii) health insurance agent, (iii) life and health insurance agent, (iv) property and casualty insurance agent, and (v) title insurance agent shall, on a biennial basis, furnish evidence to the Commission in a manner prescribed by the Commission as set forth in this article that the continuing education requirements of this article have been satisfied.

B. Any agent who holds one type of license subject to this section shall complete sixteen hours of continuing education credits. Any agent who holds more than one type of license subject to this section shall complete twenty-four hours of continuing education credits with a minimum of eight credit hours in each license type. Of the total required credits for each biennium, two credit hours shall be in insurance law and regulations applicable in Virginia. Agents may receive no more than seventy-five percent of their required credits from insurance company or agency-sponsored courses.

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

A. An insurance continuing education advisory board, hereinafter called the Board, appointed by the Commission, shall approve all continuing education instructors, continuing education courses and programs of instruction. 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.

1. 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 fifty 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 written 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.

2. 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 requirements. However, agents and instructors may apply credits for attending or teaching the same course only once during any biennium.

3. Excess credit hours accumulated during any biennium may be carried forward to the next biennium only.

B. Members of the Board shall be appointed as follows:

- ~~1. Two employees of the State Corporation Commission's Bureau of Insurance;~~
- ~~2. 1.~~ One representative from the Independent Insurance Agents of Virginia;
- ~~3. 2.~~ One representative from the Professional Insurance Agents of Virginia and the District of Columbia;
- ~~4. 3.~~ Two representatives from the Virginia Association of Life Underwriters;
- ~~5. 4.~~ One representative of a licensed property and casualty insurance company writing business in this Commonwealth that operates through an exclusive agency force;
- ~~6. 5.~~ One representative of a licensed life and health insurance company writing business in the Commonwealth that operates through an exclusive agency force;
- ~~7. 6.~~ One representative of a licensed property and casualty insurance company domiciled and writing business in this Commonwealth;

8. 7. One representative of a licensed life and health insurance company domiciled and writing business in this Commonwealth;

9. 8. One representative of a licensed life and health insurance company writing business in this Commonwealth;

10. 9. One representative of a licensed property and casualty insurance company writing business in this Commonwealth;

11. 10. One representative from the Virginia Land Title Association; and

12. 11. One representative from the adult education or higher education field.

C. *On and after the effective date of this subsection, no person shall be appointed to serve as a member of the Board if, in the opinion of the Commission, other than as an incidental part of or unrelated to such person's employment, such person prepares, submits for approval, or teaches insurance continuing education courses in Virginia or in any other jurisdiction.*

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

E. *Actions of the Board shall be exempt from the application of the Administrative Process Act (§ 9-6.14:1 et seq.).*

§ 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 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 submit to the Board or its administrator proof of compliance with the continuing education requirements in the form and manner required by the Board. Such proof of compliance must be received by the Board or its administrator on or before December 31 of each even-numbered year. However, notwithstanding the provisions of subsection A of § 38.2-1869, for the biennium ending December 31, 1996, an agent shall be permitted to submit proof of compliance to be received by the Board or its administrator on or before January 15, 1997.*

C. *Agents seeking a waiver of continuing education 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 midnight on the date specified in subsections 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. ~~With the exception of the extension of time granted in § 38.2-1868 for completing and filing proof of having completed Board-approved courses for the biennium ending December 31, 1994, failure~~ *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.*

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, by a date thirty 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 shall become effective until the Commission has provided thirty days' written notice of such impending termination to the agent by ~~regular~~ *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. ~~During such thirty-day period, the agent may provide proof of compliance with the requirements of this article, in a manner and form acceptable to the Commission. 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 the 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 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 last day of the biennium. 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. At the end of such thirty-day period, the Board 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.~~

4. Pursuant to the requirements of subsection C of § 38.2-1817, 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. Such license may be applied for again after the agent has obtained a new life and health insurance agent's license.

B. 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 such license termination no earlier than the date of the thirty-day written notice required by subdivision A 3 of this section,~~ 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.

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, 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 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.

§ 38.2-1870. Waiver of continuing education requirements.

The requirements of this article may be waived 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 ~~deemed appropriate 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 shall be submitted to the Board 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.* 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. ~~Decisions adverse to the applicant for waiver may be appealed to the Commission or its designee.~~ 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;

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; and

4. 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 ~~subject to approval by the Commission~~. 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. ~~Upon request, the administrator shall furnish to the Commission a report of the continuing education credits reported to it by agents.~~

B. *The Board or its administrator shall, on a date and in a form acceptable to the Commission but in no event later than January 15 following the end of each biennium, provide to the Commission a report of all licensees who satisfied the requirements of this article for such biennium. However, for the biennium ending December 31, 1996, the Board shall have until January 31, 1997, to provide such report to the Commission. 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.*

§ 38.2-1873. Continuing insurance education fees.

The continuing insurance education program established by this article shall be self-supporting, and any costs incurred by the Commission, administrator, or the Board *or its members, including legal fees and other legal expenses incurred during or as a result of the good faith execution of their duties*, shall be borne by the continuing insurance education fees paid by agents, course sponsors, and course instructors ~~in a manner approved by the Commission~~.

§ 38.2-1874. Continuing education program; plan of operation; approval by Commission.

A. The Board shall submit to the Commission a plan of operation which provides for the fair and nondiscriminatory administration of the continuing insurance education program established pursuant to this article. Such plan shall not become effective until approved by the Commission in writing. *The Board may, at any time, propose amendments to the plan of operation, and such amendments shall not become effective until approved by the Commission.* The plan of operation shall:

1. Establish *guidelines for the Board to utilize in adopting* procedures for exercising ~~the~~ its powers and duties ~~of the Board~~;

2. Establish *guidelines for the Board to utilize in adopting* procedures for handling the assets of the continuing insurance education program;

3. Establish ~~the amount and method of~~ *guidelines for* reimbursing members of the Board for the necessary expenses incurred in the performance of their official duties *and for indemnifying members for all expenses and liabilities incurred as a result of their serving as members of the Board*;

4. Establish ~~regular~~ *guidelines for determining* places and times for meetings of the Board;

5. Establish *guidelines for adopting* procedures for records to be kept of all financial transactions of the Board and administrator;

6. Establish procedures for the election of Board officers;

7. ~~Provide~~ Establish *guidelines pursuant to which the Board may adopt* a reasonable means whereby any person aggrieved by an action of the Board or administrator with regard to a course or instructor submission may appeal such action to the Board, whose decision in such matters shall be final; and a reasonable means whereby any licensee aggrieved by ~~the~~ an action of the Board or administrator having the potential to affect directly such licensee's license status may, after written request, be heard in person or by an authorized representative to review the grievance. *Guidelines pertaining to licensees may include additional levels of appeal other than those set forth herein, but shall provide, at a minimum, that (i) if the Board or its administrator fails to grant or reject the grievance within thirty days after it is made, the applicant licensee filing the grievance may proceed in the same manner as if his application grievance had been rejected. Any person; (ii) any licensee adversely affected by the action of the Board or its administrator on such request may, within thirty days after written notice of the action, make a written request for informal review by the Bureau of Insurance, which shall affirm or reverse the action upon not less than ten days' written notice to the licensee and to the Board or its administrator; and (iii) any licensee adversely affected by the action of the Bureau of Insurance on such request may, within thirty days after written notice of the action, appeal to the Commission pursuant to the Commission's "Rules of Practice and Procedure."* The Commission may affirm or reverse the action upon not less than ten days' written notice to the ~~applicant~~ licensee and to the Board or its administrator; and

8. Contain *guidelines for the Board to utilize in adopting* additional provisions necessary or proper for the execution of the powers and duties of the Board including but not limited to (i) program requirements and approved programs of study; (ii) qualifications and responsibilities of course instructors; (iii) management and record-keeping responsibilities; (iv) fee schedules and filing requirements; and (v) course refund policies and procedures.

B. If the Commission disapproves all or any part of the proposed plan of operation *or amendment thereto*, the Board shall within fifteen days submit for review an appropriate revised plan of operation *or amendment thereto*. If the Board fails to do so, the Commission shall promulgate a plan of operation *or an amended plan of operation*. The plan of operation *or amended plan of operation* approved or promulgated by the Commission shall become effective and operational upon order of the Commission. ~~Amendments to the plan of operation may be made by the Board, subject to the approval of the Commission.~~

C. A regular meeting of the Board shall be held at least annually at such time, date, and place approved by the Board. Special meetings may be called at any time by the chairman. Notices of all regular and special meetings shall be sent to each person serving as a representative on the Board or a subcommittee of the Board and to the Commission. Each notice shall state the purpose of the meeting and include any proposed changes in rules or procedures. Any such meeting notices shall be given ~~by ordinary mail in such form as may be acceptable to the Board~~ at least twenty days prior to the date of the meeting. ~~The twenty-day notice period shall commence on the date of mailing the notice.~~

D. The books of account, records, reports and other documents of the Board and its administrator shall be open to the Commission for examination at all reasonable hours.

E. ~~Members of the Board shall not be subject to any personal liability with respect to the administration of the insurance continuing education program. There shall be no liability on the part of and no cause of action shall arise against any member of the Board, the Board, the Board's agents or employees, or the Commission or its representatives for any action taken or statement made by them in good faith in the performance of their powers and duties under this article.~~

2. That § 38.2-1868 of the Code of Virginia is repealed.

3. That the provisions of subdivision A 1 of § 38.2-1869 of this act shall become effective on January 1, 1997.