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SENATE BILL NO. 206

Offered January 17, 1996

A BILL to amend and reenact §§ 9-6.14:14.1 and 46.2-1576 of the Code of Virginia, relating to appointment of certain hearing officers.

Patrons—Waddell and Goode

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:14.1 and 46.2-1576 of the Code of Virginia are amended and reenacted as follows:

§ 9-6.14:14.1. Hearing officers.

A. In all hearings conducted in accordance with § 9-6.14:12, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to proceedings conducted pursuant to § 9-6.14:11 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary shall have the power to promulgate rules necessary for the administration of the hearing officer system.

All hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer will be assigned to a proceeding before that agency.

These requirements must be met prior to being included on the list of hearing officers. All attorneys on the list as of July 1, 1986, shall satisfy these requirements by January 1, 1987, to remain on the list.

B. On request from the head of an agency, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after notice in writing and a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission,

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60 the State Education Assistance Authority, ~~or~~ the Department of Motor Vehicles under Title 46.2
61 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, *or the Motor Vehicle*
62 *Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;* or (iii) any panel of a health
63 regulatory board convened pursuant to § 54.1-2400. All employees hired after July 1, 1986, pursuant to
64 §§ 65.2-201 and 65.2-203 (formerly §§ 65.1-11 and 65.1-12) by the Virginia Workers' Compensation
65 Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set
66 forth in subsection A of this section. Agency employees who are not licensed to practice law in this
67 Commonwealth, and are presiding as hearing officers in proceedings pursuant to (ii) above, shall
68 participate in periodic training courses.

69 G. Notwithstanding the exemptions of subsection A of § 9-6.14:4.1, this article shall apply to hearing
70 officers conducting hearings of the kind described in § 9-6.14:12 for the Department of Game and
71 Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia
72 Resources Authority pursuant to their basic laws.

73 § 46.2-1576. Suspension, revocation, and refusal to renew licenses or certificates of dealer registration
74 or qualification; notice and hearing.

75 A. Except as provided in § 46.2-1527.7 and subsection B of this section, no license or certificate of
76 dealer registration or qualification issued under this subtitle shall be suspended or revoked, or renewal
77 thereof refused, until a written copy of the complaint made has been furnished to the licensee, registrant,
78 or qualifier against whom the same is directed and a public hearing thereon has been had before a
79 hearing officer ~~selected from a list prepared by the Executive Secretary of the Supreme Court of~~
80 ~~Virginia. The Board shall determine whether the hearing officer is to hear the case alone or whether the~~
81 ~~Board is to hear the case with the hearing officer designated by the Board.~~ At least ten days' written
82 notice of the time and place of the hearing shall be given to the licensee, registrant, or qualifier by
83 registered mail addressed to his last known post-office address or as shown on his license or certificate
84 or other record of information in possession of the Board. At the hearing the licensee, registrant, or
85 qualifier shall have the right to be heard personally or by counsel. The hearing officer shall provide
86 recommendations to the Board within ninety days of the conclusion of the hearing. After receiving the
87 recommendations from the hearing officer, the Board may suspend, revoke, or refuse to renew the
88 license or certificate in question. A Board member shall disqualify himself and withdraw from any case
89 in which he cannot accord fair and impartial consideration. Any party may request the disqualification of
90 any Board member by stating with particularity the grounds upon which it is claimed that fair and
91 impartial consideration cannot be accorded. The remaining members of the Board shall determine
92 whether the individual should be disqualified. Immediate notice of any suspension, revocation, or refusal
93 shall be given to the licensee, registrant, or qualifier in the manner provided in this section in the case
94 of notices of hearing.

95 B. Should a dealer fail to maintain an established place of business, the Board may cancel the license
96 of the dealer without a hearing after notification of the intent to cancel has been sent, by return receipt
97 mail, to the dealer at the dealer's residence and business addresses, and the notices are returned
98 undelivered or the dealer does not respond within twenty days from the date the notices were sent. Any
99 subsequent application for a dealer's license shall be treated as an original application.