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HOUSE BILL NO. 209

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 24, 2012)

(Patron Prior to Substitute—Delegate Miller)

A BILL to amend and reenact §§ 38.2-1866, 38.2-1868.1, 38.2-1869, 38.2-1872, 38.2-1873, and 38.2-1874 of the Code of Virginia, relating to insurance agents; continuing education requirements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1866, 38.2-1868.1, 38.2-1869, 38.2-1872, 38.2-1873, and 38.2-1874 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1866. Continuing education requirements.

A. Every individual resident and nonresident (i) insurance consultant, (ii) life and annuities insurance agent, (iii) health agent, (iv) property and casualty insurance agent (v) personal lines agent, and (vi) title insurance agent shall, on a biennial basis, furnish evidence as set forth in this article that the continuing education requirements of this article have been satisfied. As used in this article, the term "agent" shall be construed to refer to any of the individual licensees referred to above.

B. Any agent who holds a life and annuities license or a health agent license, or both, shall complete ~~sixteen~~ 16 hours of relevant continuing education credits.

C. Any agent who holds a personal lines license or a property and casualty license shall complete ~~sixteen~~ 16 hours of relevant continuing education credits.

D. Any agent who holds a title agent license shall complete ~~sixteen~~ 16 hours of relevant continuing education credits.

E. ~~Any~~ Except as provided in subsection B and § 38.2-1871, any agent who holds licenses from more than one category of licenses ~~provided above identified in subsection A~~ shall complete ~~twenty-four~~ 24 hours of relevant continuing education credits with a minimum of eight credit hours in each such category.

F. Of the total required credits for each biennium, ~~two~~ three credit hours shall be in insurance ethics, which may include insurance law and regulations applicable in Virginia.

G. Agents may receive no more than ~~seventy-five~~ 75 percent of their required credits from courses provided by insurance companies or agencies. The Board, in its sole discretion, shall, at the time of course approval, determine whether any particular course shall be considered to be insurance company or agency sponsored, and shall require all course sponsors to provide this information clearly and conspicuously to all those enrolling in that course.

§ 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 ~~December 31~~ November 30, or the next working day if November 30 falls on a weekend, 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.

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60 After the March 31 deadline November 30, agents who have obtained the requisite continuing
61 education course credits in the time permitted for obtaining such credits, but who have failed to submit
62 proof of compliance, shall be provided a final opportunity to submit the proof of compliance after the
63 Commission has issued notice of impending termination of their licenses, if such agents submit proof of
64 compliance and pay the filing fees and the \$500 penalty as provided in subdivision D 1 of § 38.2-1869
65 within the 30 calendar day notice period provided pursuant to such subdivision failed to complete all
66 continuing education course, exemption, or waiver requirements or have failed to pay any required fees
67 shall be provided a final opportunity to complete such requirements, provided proof of compliance is
68 received by the Board or its administrator by December 31, or the next working day thereafter if
69 December 31 falls on a weekend.

70 ~~ED.~~ Failure of an agent to furnish proof of compliance by the applicable date specified in subsection
71 B or C or D of this section shall result in the imposition of the penalties license termination as set forth
72 in § 38.2-1869.

73 ~~FE.~~ Agents seeking a waiver of some or all of the course credit requirements for a biennium
74 pursuant to § 38.2-1870 shall submit all documentation, forms, and fees specified by the Board so as to
75 be received by the Board or its administrator as set forth in § 38.2-1870.

76 ~~GF.~~ Any agent holding one or more licenses subject to this article who fails to submit complete
77 documentation showing proof of compliance with continuing education requirements, as well as all
78 specified forms and fees, so as to be received by the Board or its administrator by the close of business
79 on the dates described in this section shall be deemed to be in noncompliance with the requirements of
80 this article.

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

83 § 38.2-1869. Failure to satisfy requirements; termination of license.

84 A. Failure of an agent to satisfy the requirements of this article within the time period specified in
85 § 38.2-1868.1, either by obtaining the continuing education credits required and furnishing evidence of
86 same to the Board or its administrator as required by this article, or by furnishing to the Board
87 acceptable evidence of exemption from the requirements of this article, or by obtaining, in a manner
88 prescribed by the Board pursuant to this article, a waiver of the requirements for that biennium, shall
89 result, subsequent to notification by the Board to the Commission, in the administrative termination of
90 each license held by the agent for which the requirement was not satisfied.

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

97 C. The Board shall, no later than 45 calendar days and no sooner than 60 calendar days prior to the
98 end of each biennium, provide a status report to each agent who has not yet fully satisfied the
99 requirements of this article for such biennium. Such report shall inform the agent of his current
100 compliance status for each license held that is subject to this article, and the consequences associated
101 with noncompliance, and shall be sent by first-class mail to such agent at his last known residence
102 address as shown in the Commission's records. Failure of an agent to receive such notification shall not
103 be grounds for contesting license termination.

104 ~~D. 1~~ No administrative termination pursuant to this section shall become effective until the
105 Commission has provided 30 calendar days' written notice of such impending termination to the agent
106 by first-class mail sent to the agent at the agent's last known residence address as shown in the
107 Commission's records. The notice period shall commence on the date that the written notice is deposited
108 in the United States mail and, if the 30th calendar day falls on a Saturday or Sunday weekend, the end
109 of the notice period shall be extended to the next business day. Failure of an agent to receive such
110 notification shall not be grounds for contesting a license termination. Any agent who obtained the
111 required number of continuing education credits in the time permitted for obtaining such credits and
112 paid any required fees shall be permitted to submit proof of compliance during the 30 calendar day
113 notice period if the agent pays, in addition to the filing fee established by the Board for submission of
114 proof of compliance, a penalty of \$500 to the Board in the manner prescribed by the Board; provided
115 that such payment and submission of proof of compliance shall be received by the Board or its
116 administrator, in the form and manner required by the Board, prior to the end of the 30 calendar day
117 notice period.

118 ~~2D.~~ Neither the Board, its administrator, nor the Commission shall have the power to grant an agent
119 additional time for completing the continuing education credits required by § 38.2-1866, or additional
120 time for submitting proof of compliance as required by § 38.2-1868.1, or additional time for seeking
121 waivers or exemption pursuant to § 38.2-1870 or § 38.2-1871.

E. During the period of 30 calendar days immediately following such notice from the Commission period set forth in subsection C of § 38.2-1868.1, 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 complete all continuing education course, exemption, or waiver requirements and 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.

3F. During the 30 calendar day notice period set forth in subsection C of § 38.2-1868.1, the Board shall not be obligated to review or respond to any other submissions 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 C of § 38.2-1868.1. 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 45 30 calendar days following the expiration of the 30-day period set forth in subsection C of § 38.2-1868.1 shall be deemed a waiver by such agent of the right to appeal the determination of noncompliance.

4G. No more than 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 (5 VAC 5-20-10 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 of license termination shall be deemed a waiver by the agent of the right to contest such license termination.

EH. Pursuant to the requirements of subsection C of § 38.2-1815, §§ 38.2-4806 and 55-525.19, respectively:

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

2. A resident 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.

2I. A resident agent whose license 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-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.

3J. 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 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

183 and manner required by the Commission of their good standing in their state of residence shall not be
184 required to complete the examination required by ~~§ 38.2-1817~~, provided that the insurance supervisory
185 official of the nonresident agent's state of residence will grant similar exemptions to Virginia residents
186 seeking license renewal or reissue in such state *in the manner prescribed by § 38.2-1836*.

187 GK. A resident or nonresident agent who voluntarily surrenders his license without prejudice during a
188 biennium or prior to the expiration of the appeal period for that biennium as described in subsection D
189 F, and who has not provided proof of compliance for such biennium, shall not be permitted to apply for
190 a new license of the same type until such agent has complied with the requirements of subsection F of
191 this section. Further, if such agent chooses not to apply for a new license under the terms of subdivision
192 F 2 or F 3 of this section, such agent shall not be permitted to obtain a new license of the same type
193 until the expiration of the same 90-day period applicable to agents whose licenses are terminated
194 pursuant to subsection A of this section *I or J*.

195 HL. A resident agent whose license terminates because, within 180 calendar days prior to the end of
196 a biennium, or prior to the expiration of the appeal period for that biennium as described in subsection
197 D F, such agent moves his residence to another state, and who had not, prior to such relocation,
198 provided proof of compliance for such biennium shall not be permitted to apply for a new license of the
199 same type until such agent has complied with the requirements of subdivisions F 1 and F 2 of this
200 section. Further, if the agent chooses not to apply for a new license under the terms of subdivision F 2
201 of this section, such agent shall not be permitted to obtain a new license of the same type until the
202 expiration of the same 90-day period applicable to agents whose licenses are terminated pursuant to
203 subsection A of this section *subsection J*.

204 IM. An insurance consultant who fails to renew his insurance consultant license by the date specified
205 in § 38.2-1840, but who obtains a new insurance consultant license within 12 months following such
206 renewal date shall be treated, for purposes of determining exemption from continuing education
207 requirements pursuant to § 38.2-1871, as if such insurance consultant license had been renewed in a
208 timely manner.

209 § 38.2-1872. Administrative duties of Board; transfer to outside administrator.

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

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

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

228 § 38.2-1873. Continuing insurance education fees.

229 The continuing insurance education program established by this article shall be self-supporting, and
230 any costs incurred by the Commission, administrator, or the Board or its members, including legal fees
231 and other legal expenses incurred during or as a result of the good faith execution of their duties, shall
232 be borne by the continuing insurance education fees paid by agents, course sponsors, and course
233 instructors, *which fees, except for duplicate payments, shall be nonrefundable upon receipt*.

234 § 38.2-1874. Continuing education program; plan of operation; approval by Commission.

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

240 1. Establish guidelines for the Board to utilize in adopting procedures for exercising its powers and
241 duties;

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

244 3. Establish 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 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. Establish guidelines pursuant to which the Board may adopt a reasonable means whereby any person aggrieved by an action of the Board or administrator may appeal such action to the Board and, after written request, be heard in person or by an authorized representative to review the grievance. Guidelines 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 30 15 calendar days after it is made, the person filing the grievance may proceed in the same manner as if his grievance had been rejected; (ii) any person adversely affected by the action of the Board or its administrator on such request may, within 30 15 calendar 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 10 calendar days' written notice to the person and to the Board or its administrator; and (iii) any person adversely affected by the action of the Bureau of Insurance on such request may, within 30 15 calendar 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 10 calendar days' written notice to the person 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 15 calendar 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.

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 in such form as may be acceptable to the Board at least 20 calendar days prior to the date of the meeting.

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. 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 the provisions of this act shall become effective on January 1, 2013.