

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 285

*An Act to amend and reenact §§ 38.2-1868.1, 38.2-1869, and 38.2-1870 of the Code of Virginia, relating to insurance agents; continuing education program changes.*

[H 844]

Approved March 7, 2016

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

**1. That §§ 38.2-1868.1, 38.2-1869, and 38.2-1870 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, or the next working day if November 30 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 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.*

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

~~E.~~ F. 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 ~~as set forth in § 38.2-1870 no later than the deadlines set forth in subsections B or C of this section.~~

~~F.~~ G. 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.

~~G.~~ H. 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 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.

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. 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. During the 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.

F. During the 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 subsection C of § 38.2-1868.1. Subsequent to the expiration of such period, 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 30 calendar days following the expiration of the 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.

G. 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 *the license was administratively terminated* shall be deemed a waiver by the agent of the right to contest such license termination.

H. 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.

I. 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, 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. 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. 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, 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 I or J.

L. 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, 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.

M. 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.

**§ 38.2-1870. Waiver of continuing education requirements.**

The requirements of this article pertaining to the number of course credits required may be waived, in whole or in part, 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 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. Requests for waiver of all course credit requirements shall be submitted to the Board or its administrator no later than ninety calendar 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 calendar days prior to the end of the biennium, requests for waivers of some but not all of the course credit requirements shall be submitted to the Board or its administrator no later than the applicable submission deadline set forth in § 38.2-1868.1. The Board shall approve or disapprove the waiver request within thirty calendar days of receipt thereof, and shall provide written notice of its decision to the applicant for waiver within five calendar days of rendering its decision. Any waiver granted pursuant to this section shall be valid only for the biennium for which waiver application was made.