

COMMONWEALTH OF VIRGINIA

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January 17, 2002

Administrative Letter 2002-1

TO: ALL INSURANCE COMPANIES; HEALTH, DENTAL, OPTOMETRIC AND LEGAL SERVICES PLANS; AND HEALTH MAINTENANCE ORGANIZATIONS LICENSED IN VIRGINIA

RE: **PROCEDURES TO RECOGNIZE MILITARY CALL-UP TO ACTIVE DUTY – AGENT LICENSING AND AGENT APPOINTMENT PROCESSES**

I am sending this administrative letter to all insurers with the request that they provide copies of it to their appointed agents in Virginia. Prospectively, insurers may instead provide their newly appointed agents with directions to review this letter by accessing the Bureau of Insurance Internet web site at: <http://www.state.va.us/scc/division/boi/webpages/administrativetrselection.htm>.

I am also sending copies of this administrative letter to the various agents associations in Virginia, with the request that they, too, attempt to disseminate this information to their members.

Finally, I am sending this administrative letter to the Bureau's contracted licensing examination provider (Experior Assessments) with the request that this information be incorporated into future editions of the Licensing Information Bulletin and be provided in communications with those preparing candidates for the licensing examinations.

In view of the extraordinary circumstances resulting from the events of September 11, 2001, situations are likely to arise in which applicants for insurance agent licenses may be precluded from meeting certain license application deadlines, and in which those holding agent licenses may be precluded from meeting certain appointment deadlines, due to unexpected activation of military units in which they serve as reserves.

The Bureau of Insurance wishes to be as understanding as possible in such circumstances so that those serving our country are not unduly penalized. Fortunately, the Code of Virginia provides sufficient leeway to permit the State Corporation

Commission, through its Bureau of Insurance, to make exceptions where good cause is shown.

- *The first circumstance in which a problem might arise is where a candidate for licensing has registered for a licensing examination to be taken within one year of completing preclicensing requirements as required by § 38.2-1816 B. That section also provides: "The Commission, however, may waive this time limit in individual circumstances in accordance with such criteria as may be prescribed."*

The Bureau would take the position (and would so instruct its contracted licensing examination provider) that if the applicant is called to active duty prior to the scheduled examination date, the time limit will toll during the period that the applicant is on active duty. Upon release from active duty, and upon providing to the Bureau's contracted licensing examination provider proof of having been on active duty and proof of the date of release from active duty, the period will begin to run again and the applicant will be permitted to re-schedule the examination WITHOUT PENALTY.

It should be noted that the preclicensing study course requirement in § 38.2-1816 is repealed effective September 1, 2002, after which this particular exception will become moot.

All other citations herein are to the provisions as they will be in effect on September 1, 2002.

- *§ 38.2-1817 F requires an applicant for a license requiring an examination to take the examination within ninety calendar days from the date the registration is accepted. Failure to do so results in forfeiture of the examination fee and withdrawal of the registration for the examination.*

The Bureau would take the position (and would so instruct its contracted licensing examination provider) that if the applicant is called to active duty prior to the end of the three month period, the applicant will be given a new period of three months following release from active duty to schedule and take the examination, WITHOUT PENALTY. The rationale behind this position would be that the time period in the statute was created in contemplation of the agent having a full ninety calendar days in which to act. Upon release from active duty, and upon providing to the Bureau's contracted licensing examination provider proof of having been on active duty and proof of the date of release from active duty, the applicant will be given a new period of three months in which to schedule and take the examination.

- *The next circumstance that might occur would come under the purview of § 38.2-1817 G, which requires the applicant to apply for and be issued the license within 183 days following the date the applicant passes the required examination. Failure to meet this deadline results in invalidation of the examination grade and a requirement to register for, pay for, and pass the examination again. A similar requirement is found in § 38.2-1819 B.*

The Bureau would take the position that if the applicant is called to active duty prior to the deadline, the time limit will toll during the period that the applicant is on active duty. The rationale behind this position would be that the time period in the statute was created in contemplation of the agent having a full 183 calendar days in which to act. Upon release from active duty, and upon providing to the Bureau proof of having been on active duty and proof of the date of release from active duty, the period will begin to run again and the applicant will be permitted to apply for the license WITHOUT PENALTY within the extended deadline period.

- *§ 38.2-1817 H provides that an individual who applies for a resident agent's license, and who was previously licensed for the same lines of authority in the individual's former home state will be exempt from the licensing examination, but only if the application in Virginia is made while the individual is still licensed in the former home state or within ninety calendar days of the cancellation of the applicant's previous license in the home state. Similarly, § 38.2-1818 B gives an individual moving to Virginia a period of ninety calendar days to obtain a Virginia resident license without being subject to prelicensing examination requirements.*

The Bureau would take the position that if the applicant is called to active duty while in the process of relocating to Virginia, the applicant should not be penalized by being required to take the examination because the ninety-day period elapsed in the interim. Instead, the Bureau would grant the applicant a new period of ninety days following the applicant's release from active duty. The rationale behind this position would be that the time period in the statute was created in contemplation of the agent having a full ninety calendar days in which to act. Upon release from active duty, the applicant will have a new period of ninety days in which to apply for a resident Virginia license, upon providing to the Bureau proof of having been on active duty and proof of the date of release from active duty.

- *§ 38.2-1818 A provides a grace period for an agent who holds a nonresident Virginia license to obtain a resident license without penalty for a period of ninety calendar days from the date the agent becomes a Virginia resident. Failure to apply for and be issued a resident license by the end of the ninety calendar day period subjects the agent to termination of the license authority and thus would impose a requirement that the agent satisfy Virginia prelicensing examination requirements before a new resident license could be issued.*

The Bureau would take the position that if the applicant is called to active duty after establishing Virginia residence and prior to the expiration of the ninety calendar day period provided in § 38.2-1818 A, the agent will be given a period of ninety calendar days following release from active duty in which to secure the Virginia resident license. The rationale behind this position would be that the time period in the statute was created in contemplation of the agent having a full ninety calendar days in which to act. Upon release from active duty, and upon providing to the Bureau proof of having been on active duty and proof that the application is submitted within ninety calendar days of the date of release from active duty, the application will be considered and if approved will be issued without regard to the expiration of the ninety calendar day period interrupted by the agent's active military service.

- *§ 38.2-1825 B states that a license shall automatically terminate after a period of 183 days during which no active appointment supporting such license was in effect. This would apply both to the situation where a new licensee fails to obtain his first appointment within 183 days or at the end of 183 days where the last supporting appointment of an existing agent's license terminated. The section further provides that "[t]he Commission may, upon a showing of good cause..., waive or extend this requirement."*

The Bureau would take the position that if the applicant is called to active duty either during the 183 days immediately following issuance of a license, or within 183 days immediately following termination of the agent's last supporting appointment under a license, the time limit will toll during the period that the applicant is on active duty. Upon release from active duty, and upon providing to the Bureau proof of having been on active duty and proof of the date of release from active duty, the period will begin to run again and the applicant will have the remainder of the extended period in which to secure an appropriate supporting appointment.

- *Finally, there is a possibility that the duration of a temporary license issued pursuant to § 38.2-1830 B could be affected by the licensee being called to active military duty. That section also provides, in subsection G, that "[t]he Commission, in its sole discretion and for good cause shown may renew licenses granted under this section."*

The Bureau would take the position that if the applicant is called to active duty after being issued a temporary license and prior to expiration of the temporary license at the end of 90 days, the effective period of the license will toll during the period the licensee is on active duty, thereby effectively "renewing" the license for the extended period of time. Upon release from active duty, and upon providing to the Bureau proof of having been on active duty and proof of the date of release from active duty, the period will begin to run again and the applicant's temporary license will continue in force until the end of the extended ninety-day period.

- We recognize that not every possible situation may have been addressed above. It would be the Bureau's intent that similar situations be addressed consistently with the situations herein addressed. Examples would be for licenses such as "consultant", "surplus lines broker", "managing general agent", and "viatical settlement broker" which are renewable licenses. Renewal dates would be extended upon submission of proof of having been on active duty and proof of the date of release from active duty.
- We also recognize that the Bureau is not the entity responsible for development and administration of Virginia's insurance continuing education program; that responsibility lies with the Virginia Insurance Continuing Education Board (Board) created and operating under Article 7 of Chapter 18 of Title 38.2 of the Code of Virginia. The Bureau, however, would urge the Board to adopt procedures consistent with the spirit of those described above for continuing education compliance and granting full or partial waivers, pursuant to § 38.2-1870.

Throughout this document, we have made reference to “proof of having been on active duty and proof of the date of release from active duty”. While acknowledging that other forms of proof may, in the future, prove to be sufficient, at this time the Bureau is defining the terms to require the individual to provide copies of the ORDERS showing the activation date and copies of the AMENDED ORDERS showing the date of rescission of active duty status. It is our understanding that these documents are used consistently throughout the United States armed forces.

It would be the Bureau's intent to interpret these procedures more liberally rather than more stringently. That is, in lieu of adhering strictly to a set number of days, reasonable adherence to the deadlines and extended deadlines will be accepted.

Finally, we would urge those affected by the call to active military duty to provide, whenever possible, **prior** notice to the Bureau (or the C.E. Board's administrator, as appropriate) of having received orders so that the individual's file can be appropriately annotated, subject to later submission of proof of having been on active duty and proof of the date of release from active duty.

Further information may be obtained by contacting the Bureau's Agent Licensing Section through our Interactive Voice Response system at 804-371-9631 or on the Bureau's Web Site at: <http://www.state.va.us/scc/division/boi>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alfred W. Gross".

Alfred W. Gross
Commissioner of Insurance

AWG/gm