COMMITTEE ON FINANCE

BILL NO. 31-0443

Thirty-first Legislature of the Virgin Islands

September 8, 2016

An Act amending title 22 Virgin Islands Code adding chapter 20 to enact "The Virgin Islands Risk-Based Capital for Insurers Act"

PROPOSED BY: Senator Neville James by Request of the Governor

WHEREAS, the laws governing the insurance industry in the Territory are outdated as many of the laws were enacted in 1968 and have not been updated; and

WHEREAS, the laws governing the insurance industry in the Territory do not grant the Commissioner of Insurance of the Virgin Islands all of the necessary authority to effectively regulate the solvency of the multi-state domestic insurance industry in the Territory; and

WHEREAS, all other United States jurisdictions have periodically updated their insurance laws commensurate with the ever evolving insurance industry; and

WHEREAS, the National Association of Insurance Commission has established core accreditation standards and a comprehensive set of laws, known as the Model Laws and Regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry thereby affording greater protection to the policyholders in the United States; and

WHEREAS, all of the 50 United States and the Commonwealth of Puerto have adopted the NAIC Model Laws and Regulations and the accreditation requirements and are now in substantial compliance with the NAIC accreditation standards; and

WHEREAS, the Territory has not adopted most of the NAIC Model Laws and Regulations that are necessary to obtain substantial compliance with the NAIC accreditation standards and is therefore not in compliance with the NAIC accreditation standards;

WHEREAS, the enactment of the Virgin Islands Risk-Based Capital for Insurers Act will place the Territory on par with other United States jurisdiction and will satisfy one of the NAIC requirements for bringing the Territory into compliance with the NAIC accreditation standards; Now, Therefore;

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code is amended by adding chapter 20 to read as follows:

Chapter 20. Virgin Islands Risk-Based Capital for Insurers Act

§ 470. Short Title

This chapter may be cited as "The Virgin Islands Risk-Based Capital for Insurers Act or "The RBC" ACT "

§ 471. Definitions

As used in this chapter:

(a) "Adjusted RBC Report" means an RBC report that has been adjusted by the Commissioner of Insurance in accordance with section 472(e).

(b) "Commissioner" means the Commissioner of Insurance.

(c) "Corrective order" means an order issued by the Commissioner specifying corrective actions which the Commissioner has determined are required.

(d) "Domestic insurer" means any insurance company domiciled in this Territory.

(e) "Filing date" means March 1 of each year.

(f) "Foreign insurer" means any insurance company that is licensed to do business in the Territory under this title but is not domiciled in the Territory.

(g) "Fraternal benefit society" means a corporation, society or voluntary association operating as a "mutual nonprofit benefit society" and licensed under chapter 53, section 1304 of this title.

(h) "Life health insurer" means any insurance company licensed under chapter 9, section 209 of this title, or a licensed property and casualty insurer writing only accident and health insurance.

(i) "NAIC" means the National Association of Insurance Commissioners.

(j) "Negative trend" means, with respect to a life or health insurer or a fraternal benefit society, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the Life or Fraternal RBC Instructions.

(k) "Property and casualty insurer" means any insurance company licensed under chapter 9, section 209 of this title, but does not include mono line mortgage guaranty insurers, financial guaranty insurers and title insurers.

(l) "RBC" means Risk-Based Capital, a method of measuring an insurer's appropriate minimum amount of capital needed to support its overall business operations in consideration of its size and risk profile and limits the amount of risk a company can take.

(m) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(n) "RBC Level" means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(1) "Company Action Level RBC" means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

(2) "Regulatory Action Level RBC" means the product of 1.5 and its' Authorized Control Level RBC;

(3) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;

(4) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(o) "RBC Plan" means a comprehensive financial plan containing the elements specified in section 473(b). If the Commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the Commissioner's recommendation, the plan is called the "Revised RBC Plan."

(p) "RBC Report" means the report required in section 472.

(q) "Risk-Based Capital Ratio" means the insurer's ratio of total adjusted capital, actual capital, divided by its authorized control level RBC, required capital.

(r) "Total adjusted capital" means the sum of:

(1) an insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under chapter 9, section 222 of this title; and

(2) such other items, if any, as the RBC instructions may provide.

(s) "Territory" means the Virgin Islands.

§ 472. Risk Based Capital Reports

(a) Every domestic insurer on or before each filing date shall prepare and submit to the Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC Report with:

(1) the NAIC in accordance with the RBC instructions; and

(2) the insurance Commissioner in any state in which the insurer is authorized to do business, if the insurance Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of:

(A) 15 days from the receipt of notice to file its RBC 11 Report with that state; or

(B) the filing date.

(b) A life and health insurer's or fraternal benefit society's RBC is determined in accordance with the formula set forth in the RBC instructions. The formula must take into account, and may be adjusted for the covariance between the following factors determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) the risk with respect to the insurer's assets;

(2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) the interest rate risk with respect to the insurer's business; and

(4) all other business risks and other relevant risks set forth in the RBC instructions.

(c) A property and casualty insurer's RBC is determined in accordance with the formula set forth in the RBC instructions. The formula must take the following into account and may adjust for the covariance as determined in each case by applying the following factors in the manner set forth in the RBC instructions:

(1) asset risk;

(2) credit risk;

(3) underwriting risk; and

(4) all other business risks and such other relevant risks as are set forth in the RBC instructions.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this chapter and the formulas, schedules and instructions referenced in this chapter are desirable in the business of insurance. Insurers must seek to maintain capital above the RBC levels required by this chapter. Additional capital is useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.

(e) If a domestic insurer files an RBC Report which in the judgment of the Commissioner is inaccurate, the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. An RBC Report so adjusted is referred to as an "Adjusted RBC Report."

§ 473. Company Action Level Event

(a) "Company Action Level Event" means any of the following events:

(1) The filing of an RBC Report by an insurer that indicates that:

(A) The insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC, but less than its Company Action Level RBC;

(B) If a life or health insurer or a fraternal benefit society, the insurer or society has total adjusted capital which is greater than or equal to its Company Action Level RBC, but less than the product of its Authorized Control Level RBC and 3.0 and has a negative trend; or

(C) If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC, but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions;

(2) The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates an event in paragraph (1) of this subsection, if the insurer does not challenge the Adjusted RBC Report under section 477; or

(3) If, pursuant to section 477, an insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1) of this subsection, the notification by the

Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) If a Company Action Level Event occurs, the insurer shall prepare and submit to the Commissioner an RBC Plan that must:

(1) identify the conditions that contribute to the Company Action Level Event;

(2) contain proposals of corrective actions that h the insurer intends to take and expects to result in the elimination of the Company Action Level Event;

(3) provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(4) identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) identify the quality of, and problems associated with, the insurer's business, including, but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC Plan must be submitted:

(1) no later than 45 days after the Company Action Level Event; or

(2) if the insurer challenges an Adjusted RBC Report pursuant to section 477, no later than 45 days after notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) No later than 60 days after the submission by an insurer of an RBC Plan to the Commissioner, the Commissioner shall notify the insurer whether the RBC Plan must be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC Plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination, and may set forth proposed revisions renders the RBC Plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a Revised RBC Plan that may incorporate by reference any revisions proposed by the Commissioner, and shall submit the Revised RBC Plan to the Commissioner:

(1) no later than 45 days after the notification from the Commissioner; or

(2) if the insurer challenges the notification from the Commissioner under section 477, no later than 45 days after a notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(e) If the Commissioner notifies an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the Commissioner may at the Commissioner's discretion, subject to the insurer's right to a hearing under section 477, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance Commissioner in any state in which the insurer is authorized to do business if:

(1) the state has an RBC provision substantially similar to section 478(a); and

(2) the insurance Commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) 15 days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

(B) the date on which the RBC Plan or Revised RBC Plan is filed under sections 473(c) and 473(d).

§ 474. Regulatory Action Level Event

(a) "Regulatory Action Level Event" means, with respect to any insurer, any of the following events:

(1) The filing of an RBC Report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(2) The notification by the Commissioner to an insurer of an Adjusted RBC Report that indicates the event in paragraph (1), provided the insurer does not challenge the Adjusted RBC Report under section 477;

(3) If, pursuant to section 477, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1), the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge;

(4) The failure of the insurer to file an RBC Report by the filing date, unless the insurer has provided an explanation for such failure which is satisfactory to the Commissioner and has cured the failure not later than 10 days after the filing date;

(5) The failure of the insurer to submit an RBC Plan to the Commissioner within the period set forth in section 473(c);

(6) Notification by the Commissioner to the insurer that:

(A) The RBC Plan or revised RBC Plan submitted by the insurer is, in the judgment of the Commissioner, unsatisfactory; and

(B) the notification constitutes a Regulatory Action Level Event with respect to the insurer, provided the insurer has not challenged the determination under section 477;

(7) If, pursuant to section 477, the insurer challenges a determination by the Commissioner under paragraph (6), the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected such challenge;

(8) Notification by the Commissioner to the insurer that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the Commissioner has so stated in the notification, provided the insurer has not challenged the determination under section 477; or

(9) If, pursuant to section 477, the insurer challenges a determination by the Commissioner under paragraph (8), the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the challenge.

(b) If a Regulatory Action Level Event occurs, the Commissioner shall:

(1) require the insurer to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

(2) perform such examination or analysis as the Commissioner considers necessary of the assets, liabilities and operations of the insurer including a review of its RBC Plan or Revised RBC Plan; and

(3) subsequent to the examination or analysis, issue a corrective order specifying the corrective action the Commissioner determines are required.

(c) In determining corrective actions, the Commissioner may take into account the factors that are relevant with respect to the insurer based upon the Commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC Plan or Revised RBC Plan must be submitted:

(1) no later than 45 days after the occurrence of the Regulatory Action Level Event;

(2) If the insurer challenges an Adjusted RBC Report pursuant to section 477 and the challenge is not frivolous in the judgment of the Commissioner, no later than 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge; or

(3) If the insurer challenges a Revised RBC Plan pursuant to section 477 and the challenge is not frivolous in the judgment of the Commissioner, no later than 45 days after the notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) The Division of Banking and Insurance may hire any necessary additional staff in order to carry out the duties and obligations under this section. The staff of the Division shall receive the training necessary to carry out the duties and obligations under this section including, but not limited to, training in conducting the examination required in this section. All fees, costs and expenses associated with the examination of an insurer are borne by the affected insurer or another party as directed by the Commissioner.

(e) The Commissioner may hire actuaries and investment experts and other consultants to review the insurer's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants are borne by the affected insurer or another party as directed by the Commissioner.

§ 475. Authorized Control Level Event

(a) "Authorized Control Level Event" means any of the following events:

(1) The filing of an RBC Report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its Mandatory Control Level RBC, but less than its Authorized Control Level RBC;

(2) The notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates the event in paragraph (1), if the insurer does not challenge the Adjusted RBC Report under section 477;

(3) If, pursuant to section 477, the insurer challenges an Adjusted RBC Report that indicates the event in paragraph (1), notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge;

(4) The failure of the insurer to respond to a corrective order, in a manner satisfactory to the Commissioner; but the insurer has not challenged the corrective order under section 477;

(5) If the insurer has challenged a corrective order under section 477 and the Commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the Commissioner, to the corrective order subsequent to rejection or modification by the Commissioner.

(b) If an Authorized Control Level Event occurs, the Commissioner shall:

(1) take the actions required under section 474 regarding an insurer with respect to which an Regulatory Action Level Event has occurred; or

(2) if the Commissioner considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions necessary to cause the insurer to be placed under regulatory control pursuant to chapter 51 of this title. If the Commissioner takes such actions, the Authorized Control Level Event is sufficient grounds for the Commissioner to take action under chapter 51 of this title. If the Commissioner takes action under this paragraph pursuant to an Adjusted RBC Report, the insurer is entitled to the protections afforded under the provisions of section 477, pertaining to summary proceedings.

§ 476. Mandatory Control Level Event

(a) “Mandatory Control Level Event” means any of the following events:

(1) the filing of an RBC Report that indicates that the insurer’s total adjusted capital is less than its Mandatory Control Level RBC;

(2) Notification by the Commissioner to the insurer of an Adjusted RBC Report that indicates that the insurers total adjusted capital is less than its Mandatory Control Level RBC, provided the insurer does not challenge the Adjusted RBC Report under section 477; or

(3) If, pursuant to section 477, the insurer challenges an Adjusted RBC Report that indicates that the insurer's total adjusted capital is less than its Mandatory Control Level RBC notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(b) If a Mandatory Control Level Event occurs:

(1) Regarding a life insurer or fraternal benefit society, the Commissioner shall take the necessary action to place the insurer under regulatory control pursuant chapter 51 of this title. The Mandatory Control Level Event is sufficient grounds for the Commissioner to take action under chapter 51 of this title. If the Commissioner takes action pursuant to an Adjusted RBC Report, the insurer is entitled to the protections of section 477, notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds that there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within a 90-day period.

(2) Regarding a property and casualty insurer, the Commissioner shall take the action necessary to place the insurer under regulatory control pursuant to chapter 51 of this title, or, in the case of an insurer that is writing no business and that is running-off its existing business, the Commissioner may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the Mandatory Control Level Event is sufficient grounds for the Commissioner to take action under chapter 51 of this title, and if the Commissioner takes action pursuant to an Adjusted RBC Report, the insurer is entitled to the protections of section 477, pertaining to summary proceedings. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90

days after the Mandatory Control Level Event, if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within a 90-day period

§ 477. Hearings

(a) The insurer has the right to a confidential departmental hearing, on a record, where the insurer may challenge any determination or action taken by the Commissioner upon any of the following:

(1) Notification to an insurer by the Commissioner of an Adjusted RBC Report; or

(2) Notification to an insurer by the Commissioner that:

(A) The insurer's RBC Plan or Revised RBC Plan is unsatisfactory; and

(B) The notification constitutes a Regulatory Action Level Event with respect to such insurer; or

(3) Notification to any insurer by the Commissioner that the insurer has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the Company Action Level Event with respect to the insurer in accordance with its RBC Plan or Revised RBC Plan; or

(4) Notification to an insurer by the Commissioner of a corrective order with respect to the insurer.

(b) The insurer shall notify the Commissioner of its request for a hearing not more than five days after the notification from the Commissioner. Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than 10 nor more than 30 days after the date of the insurer's request. The appeals procedure set forth in chapter 7 of this title applies to an appeal of the Commissioner's order.

§ 478. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

(a) Except information that is required to be set forth in a publicly available annual statement schedule or RBC Plans, all RBC Reports are confidential and privileged and are not subject to examination by the public, to a subpoena, to discovery or admissible as evidence in any private civil action. The privilege extends any corrective order issued by the Commissioner pursuant to examination or analysis of any domestic insurer or foreign insurer and any results or report of any examination or analysis of an insurer in the possession or control of the Division of Banking of Insurance However, the Commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.,

(b) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (a).

(c) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement

authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) may enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information may occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (c).

(e) The Commissioner's use of the comparison of an insurer's Total Adjusted Capital to any of its RBC Levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Except as otherwise required under this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC Levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is prohibited; but if any materially false statement regarding the comparison of an insurer's Total Adjusted Capital to its RBC Levels or any of them or an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the Commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(f) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the Commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and may not be used by the Commissioner for ratemaking or considered or introduced as evidence in any rate proceeding or used by the Commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate may write.

§ 479. Supplemental Provisions; Rules; Exemption

(a) The provisions of this chapter are supplemental to any other law of the Territory, and may not preclude or limit any other powers or duties of the Commissioner under such laws, including, but not limited to, the powers and duties bestowed upon the Commissioner in chapter 3 of this title.

(b) The Commissioner may adopt reasonable regulations necessary for the implementation of this chapter.

(c) The Commissioner may institute appropriate, reasonable fees to effectuate the intent of this chapter.

§ 480. Foreign Insurers

(a) Any foreign insurer shall, upon the written request of the Commissioner, submit to the Commissioner an RBC Report as of the end of the calendar year just ended the later of:

(1) The date an RBC Report is required to be filed by a domestic insurer under this chapter; or

(2) Fifteen days after the request is received by the foreign insurer.

(b) Any foreign insurer at the written request of the Commissioner, shall promptly submit to the Commissioner a copy of any RBC Plan that is filed with the insurance Commissioner of any other state.

(c) If a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event occurs with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of this chapter, or if the insurance Commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC Plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under section 473, the Commissioner may require the foreign insurer to file an RBC Plan with the Commissioner. In such event, the failure of the foreign insurer to file an RBC Plan with the Commissioner is grounds to order the insurer to cease and desist from writing new insurance business in the Territory. In addition, the Commissioner may impose an appropriate fine on the foreign insurer for failure to submit an RBC plan upon request.

(d) If a Mandatory Control Level Event occurs with respect to any foreign insurer, a no domiciliary receiver has been appointed under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the Commissioner may make application to the District Court of the Virgin Islands as permitted under chapter 51 of this title regarding the liquidation of property of foreign insurers found in the Territory, and the occurrence of the Mandatory Control Level Event is considered adequate grounds for the application.

§ 481. Immunity

No liability or cause of action arises against the Commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their duties under this chapter.

§ 482. Severability Clause

If any provision of this chapter, or its application to any person or circumstance is held invalid, that determination does not affect the other provision or applications of this chapter that can be given effect without the invalid provision or application.

§ 483. Notices

All notices by the Commissioner to an insurer that results in regulatory action are effective upon dispatch, if transmitted by registered or certified mail. Any other transmission is effective upon the insurer's receipt of such notice.

BILL SUMMARY

This bill is intended to meet the accreditation standards established by the National Association of Insurance Commissioners and update the insurance laws of the Territory by placing them on par with other United States jurisdictions thereby affording greater and more effective protection to the policyholders of the Territory.

Risk-Based Capital ("RBC") is a method that helps the Division and other insurance regulators to prevent an insurance company from becoming insolvent. RBC uses a formula that measures the minimum amount of capital appropriate for an insurance company to support its overall business operations in consideration of its size and risk profile. It limits the amount of risk a company can take and requires a company with a higher amount of risk to hold a higher amount of capital. Capital provides a cushion to a company against insolvency.

The RBC model law was created to provide a capital adequacy standard based on the types of risks to which a company is exposed, to raise a safety net for insurers, to establish uniformity among the states, and to provide an insurance regulator the authority to take timely action when necessary. It has two main components: 1) the risk-based capital formula, that establishes a hypothetical minimum capital level that is compared to a company's actual capital level, and 2) a risk-based capital model law that grants automatic authority to the state insurance regulator to take specific actions based on the level of impairment.

The risk factors for the NAIC's RBC formulas established in the model law focus on three major areas: 1) Asset Risk; 2) Underwriting Risk; and 3) Other Risk. The emphasis on these risks differs from one formula to the next. Specifically, the RBC formula generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. There are four levels of action that can be triggered under the formula: company action, regulatory action, authorized control and mandatory control levels. Each level requires some particular action on the part of the regulator, the company, or both. For example, an insurer that breaches the Company Action Level must produce a plan to restore its RBC levels. This could include adding capital, purchasing reinsurance, reducing the amount of insurance it writes, or pursuing a merger or acquisition.

Highlights of the Bill are as follows:

Section 472 Risk-Based Capital ("RBC") Reports Section 472 provides for the preparation and submission by a domestic insurer a Report of its "Risk-Based Capital" levels.

Sections 473 through 476 Company Action, Regulatory Action, Authorized Control and Mandatory Control Level Events

Section 473 through 476 set forth the procedures for determining what corrective action must be taken depending on the information provided in a RBC Report. The four action levels are: Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event and Mandatory Control Level Event. The Mandatory Action Level is the highest action level requiring the insurer be placed under the regulatory control of the Commissioner of Insurance.

Section 477 Hearings Section 477 provides for due process for an insurer who wants to challenge a determination or action by the Commissioner of Insurance.

Section 478 Confidentiality; Prohibition on Announcements; Prohibition on Use in Ratemaking Section 478 provides that all RBC reports and RBC plans regarding a domestic or foreign insurer that are in the possession of the Commissioner of Insurance shall be confidential but allows the Commissioner to use the information in the furtherance of any regulatory or legal action brought as part of the Commissioner's legal duties. Section 478 further allows the Commissioner to share documents, materials or other information, including confidential and privileged documents with the NAIC and other state, federal and international regulatory agencies and law enforcement authorities.

Section 479 Supplemental Provisions; Rules; Exemption Section 479 provides that the provisions of the Act are supplemental to any other provisions of the laws of the territory. Section 479 further authorizes the Commissioner to adopt reasonable rules to implement the Act and institute appropriate and reasonable fees.

Section 480 Foreign Insurers Section 480 sets forth the requirements and process for foreign insurers to submit an RBC Report and RBC Plan to the Commissioner.

Section 481 Immunity Section 481 provides for the immunity from liability for the Commissioner and the employees of the Division of Banking and Insurance for actions taken under the authority of the Act.

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