COMMITTEE ON FINANCE

BILL NO. 31-0489

Thirty-first Legislature of the Virgin Islands

December 12, 2016

An Act amending title 9 Virgin Islands Code, chapter 25, relating to the International Banking Center Regulatory Act

PROPOSED BY: Senator Clifford F. Graham

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 9 Virgin Islands Code, chapter 25, subchapter I is amended as follows:

(a) By striking "international banking entity" wherever it appears in the chapter and inserting "international financial services entity";

(b) By striking "Director" wherever it appears in the chapter and inserting "Board".

(c) Section 715 by striking "The International Banking Center Regulatory Act", wherever it appears in the chapter and inserting "The International Financial Services Center Regulatory Act";

(d) Section 716 is amended as follows:

(1) subsection (b) by striking "Director of Banking and Insurance of the Office of the Lieutenant Governor" and inserting "Virgin Islands Banking Board";

(2) by re-designating the subsections accordingly and adding a new subsection (a) that reads as follows:

"(a) "Affiliate" means a corporation partnership, limited liability company business trust, or any other legal organization or entity that controls, is controlled by, or is under common control with any other of these entities."

(e) Section 717, subsection (a), paragraph (5) by striking "provided in section 749 of this title".

(f) Section 720 is amended as follows:

(1) subsection (a), paragraph (2) by striking "$10,000" and inserting "$50,000".

(2) Subsection (b), paragraphs (3) and (4) by striking "10" and inserting "5";

(3) subsection (b) by designating paragraph (6) as paragraph (7) and adding a new paragraph (6) to read as follows: "(6) Proof of the international financial services entity's registration with Financial Crimes Enforcement Network (FINCEN)."

(4) subsection (c) by adding a paragraph (4) to read as follows: "(4) A Federal Bureau of Investigations fingerprint-based background check of any person who, directly or indirectly, possesses or controls or intends to possess or control 5 percent or more in the capital of the proposed international financial services entity."

(5) Subsection (e) by striking "an immediate right" and inserting "15 days".

(g) Section 721, subsection (b) is amended as follows:

(1) paragraph (2) by inserting “an initial fee of $75,000 and” at the beginning of the paragraph; by striking “$5,000” and inserting “$75,000”; and by striking “IBE” where it appears and by inserting “IFSE”; and

(2) paragraph (5) by striking “sole”.

(h) Section 726, subsection (a), paragraph (3) is amended by inserting “including factoring” after the word “undertakings” where it first appears and by re-designating paragraph (12) as paragraph (13), re-designating the remaining paragraph accordingly and by inserting a new paragraph (12) to read as follows: “(12) Engage in advertising, selling, provision or performance, directly or indirectly, by any consumer reporting agency as defined in 15 U.S.C. § 1681a (f) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, or any affiliate or subsidiary of such a consumer reporting agency, of any product or service relating to:

(1) consumer credit, including, without limitation, maintaining information related to the credit history of consumers, providing to consumers credit reports, credit scores, credit monitoring, credit education, credit enhancement, consumer education and advice for any purpose, including, without limitation, to improve a consumer’s credit records, credit history or credit rating;

(2) identity theft and fraud protection; and

(3) the promotion, offering and provision of consumer credit or other financial products and services, including, in connection with an application for credit by consumers.”

(i) Section 730, subsection (a), paragraph (2), is amended by striking “$10,000” and inserting “$75,000”.

SECTION 2. Title 9 Virgin Islands Code, chapter 25, subchapter I is amended as follows:

(a) Section 730a is added to read as follows:

"§ 730a. Denial of a License

The Board may deny the issuance of a license or revoke a license for any one of the following reasons:

(1) providing incorrect, misleading, incomplete or materially untrue information in the license application;

(2) violating or failing to comply with any financial services or other applicable law, rule, subpoena, consent agreement, or order of the Board;

(3) obtaining, maintaining, or attempting to obtain a license through material misrepresentation or fraud;

(4) improperly withholding, misappropriating or converting any money or properties received in a fiduciary capacity;

(5) intentionally misrepresenting the terms, benefits, value, cost, or effective dates of any financial services permitted transaction;

(6) having been convicted of or pleaded guilty or no contest to a felony regardless of whether a judgment of conviction has been entered by the court;

(7) having been convicted of or pleaded guilty or no contest to a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty that is based on any act or omission relating to a financial services permitted transaction, or that involves moral turpitude regardless of whether a judgment has been entered by the court;

(8) having admitted or been found to have committed any unfair trade act or practice or financial services fraud;

(9) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this Territory or elsewhere;

(10) having a financial services-permitted transaction license, or equivalent, denied, suspended or revoked in any other country, state, province, district or territory;

(11) having been fined or issued an order by another country, state, province, district or territory regulatory authority for a violation of the Currency and Foreign Transactions Act of 1970, the Money Laundering Control Act (1986), the Anti-Drug Abuse Act of 1988, the Annunzio-Wylie Anti-Money Laundering Act (1992), the Money Laundering Suppression Act (1994) or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

(12) forging or causing the forgery of another's name to a license application or to any document related to a permitted transaction;

(13) failing to pay income taxes in accordance with Virgin Islands and Federal laws or to comply with any administrative or court order directing payment of income or corporate taxes in accordance with Virgin Islands and Federal laws;

(14) failing to respond to an order or request of the Board within 15 days after the request;

(15) proving to be untrustworthy, or a source of injury and loss to the public or if the Board so considers the licensee to be so;

(16) performing or attempting to perform permitted transactions allowed under this chapter, but that are outside the scope of the license;

(17) performing or attempting to perform transactions prohibited under this chapter;

(18) engaging in any activity for which issuance of the license could have been refused had it then existed and been known to the Board; or

(19) engaging in any other action as determined by the Board pursuant to the laws and regulations of the Territory that warrants the denial or revocation of a license."

(b) Section 732 is amended:

(1) in subsection (a) by striking "749" and inserting "730" and by striking "he" where it appears in the last sentence and inserting "the Board"; and

(2) in subsection (b) by striking "5,000" and inserting $5,000" and by striking "10,000" and inserting "$10,000".

(c) Section 733, subsection (a), paragraph (2) is amended by striking "of maintaining" and inserting "to maintain".

(d) Section 735 is amended by striking "§§ 1 et seq"; by striking "known as the 'Banking' title" and by striking "the provisions of §§ 951 et seq. of this title" and inserting "chapter 15 of title 11".

SECTION 3. Title 9 Virgin Islands Code, chapter 25, subchapter I is amended by adding section 735a to read as follows:

§ 735a. The International Financial Services Center Revolving Fund

(a) There is established in the Treasury of the Government of the Virgin Islands a fund designated as the International Financial Services Center Revolving Fund. The

Commissioner of Finance shall administer the Fund as a separate and distinct fund in the Treasury of the Government of the Virgin Islands.

(b) The Fund consists of an annual appropriations of not less than $75,000 to be used exclusively for the administrative costs and the salary of a qualified financial services examiner whose primary responsibility is to ensure that persons issued a license under this chapter comply with this chapter. The Commissioner of Finance shall disburse monies from the Fund to the Board to pay the salary of the examiner."

SECTION 4. Title 9 Virgin Islands Code, chapter 25, subchapter II is amended as follows:

(a) Subsection 736, subsection (a) by inserting "before the effective date of subchapter III" after "chapter" where it first appears and by striking "chapter" where it appears in the second instance and inserting "subchapter".

(b) Section 737 by striking "chapter" and inserting "subchapter";

(c) Section 738 in the introductory language by striking "chapter" and inserting "subchapter";

(d) Section 742 in the introductory language by striking "title" and inserting "chapter";

(e) Section 745, subsection (a) by striking "chapter" where it appears in the second instance and inserting "subchapter" and in subsection (a)(1) by striking "chapter" and inserting "subchapter";

(f) Section 748 by striking "corporation" wherever it appears in the section and inserting "international financial services entity";

(g) Section 749, subsection (a) is amended as follows:

(1) in the introductory language by striking "chapter" and inserting "subchapter";

(2) in paragraph (2) by striking "corporation" and inserting "international financial services entity";

(3) in (3) by striking "of ownership"; and

(4) in paragraphs (4) and (5) by striking "corporation" and inserting "international financial services entity"

(h) Section 749, subsection (b) is amended by striking "title 14, section 406 of the Virgin Islands Code" and inserting "14 V.I.C. § 406".

(i) Section 750 is amended as follows:

(a) by striking subsection (a) and inserting a new subsection (a) that reads as follows: "(a) Any official or employee of an international financial services entity, or of a person of which it is a unit who, on behalf of the international financial services entity receives any investor funds with the knowledge that the international financial services entity is insolvent shall be fined not less than $5,000, but not more than $25,000."

(b) Subsection (b) by striking "beneficiary" wherever it appears and by inserting "international financial services entity"; by striking "subsection (a) of" and by striking the last sentence;

(c) by re-designating subsections (b) and (c) accordingly and by adding new subsections (b) and (c), and subsections (d), (e), (f), (g), (h), (i), (j), (k) and (*l*) to read as follows:

"(b) Any director, official or employee of the international financial services entity or of the person of which the international financial services entity is a unit, who appropriates, embezzles, removes or voluntarily misuses any monies, funds, credits or securities of an international financial services entity, or who, without due authorization, issues or draws any certificate of deposit, draws any order or bill of exchange, carries out any type of acceptance or assignment of a note, bond, money order, bill of exchange, and any person who, with the same intention, aids or abets any director, official or employee shall be fined not less than $5,000, but not more than $25,000 and may be liable to make restitution.

(c) Any director, official, or employee of an international financial services entity or of the person of which the international financial services entity is a unit, who voluntarily misrepresents the financial condition of an international financial services entity or the facts about any transaction to be undertaken, or undertaken by the international financial services entity, or who declines to provide information rightfully requested by the Board shall be fined not less than $5,000, but not more than $25,000.

(d) Any applicant or beneficiary who willfully makes a false or fraudulent statement or representation as to any fact required or appropriate to the determination of the eligibility of such applicant or beneficiary for benefits under the Code, this chapter, or the regulations for the continuation or extension of the same, or who willfully makes or presents any claim for benefits under the Code, this chapter or the regulations knowing the claim to be false, fictitious or fraudulent shall be fined not more than $25,000. In addition to a fine, the willful making of a false statements on an application may result in the rejection of the application.

(e) If an international financial services entity violates any provision of title 29 Virgin Islands Code, chapter 12, or any rule or provision of its tax incentive benefit certificate, or fails or refuses to perform any duty, requirement or lawful order made by the Board, the international financial services entity is subject to a fine not to exceed $25,000 per violation.

(f) The Board shall impose a fine of not less than $5,000, but not more than $25,000 for any violation of sections 718(a), 722, 723, 726, 729 or 740(a).

(g) The Board shall impose a fine of not less than $10,000, but not more than $25,000 for any violation of sections 724(a) and 727(a).

(h) The Board may impose a fine of not less than $5,000, but not more than $25,000 for any violation of this chapter not specifically enumerated in this section. The Board may impose a late fee of $100 per day not to exceed $10,000 per day, for each day the international financial services entity fails to comply with an order or meet a deadline imposed by the Board.

(i) Multiple violations of the provisions set forth in this chapter are separate offenses and fines must be independently assessed.

(j) The waiver or the failure to assess a fine for any violation is not a waiver of any other future or concurrent violation.

(k) In construing or enforcing any provision of this chapter, the act, omission, or failure of any officer, agent, or person acting for or employed by any international financial services entity, acting within the scope of employment are considered an act, omission, or failure of the international financial services entity.

(*l*) In addition to the imposition of a fine, the Board may also impose any other penalty authorized by law or under the regulations."

(j) Section 752, subsection (c) is amended by striking "shall be" and inserting "are" and by striking "and pursuant to";

(k) Section 753 is stricken.

(*l*) Sections 751,752, and 754 are amended by striking "section 715 et seq. of this title" and inserting "this chapter".

SECTION 5. Title 9 Virgin Islands Code, subchapter II is amended by adding a section 755 to read as follows:

"**§ 755**. Notwithstanding anything to the contrary in this subchapter, after the effective date of section, any international financial services entity seeking tax benefits must apply to Virgin Islands Economic Development Commission and comply with the requirements set forth in title 29 Virgin Islands Code, chapter 12.""

BILL SUMMARY

Title 9 Virgin Islands Code chapter 25 is amended to change "international banking entities" to "international financial service entities" and changes the regulating entity from the Director of the Banking and Insurance Office of the Lieutenant Governor to the Virgin Islands Banking Board. Section 716 is amended to add a definition for "affiliate."

Section 720 is amended by: (1) increasing the cost of an application fee from $10,000 to $50,000; (2) requiring a credit, business and credit history for any person with 5% or more capital in an international financial services entity instead of 10%; (3) providing that an applicant must submit proof of registration with the Financial Crimes Enforcement Network with the application; (3) providing that the Virgin Islands Banking Board must also obtain a background check conducted by the FBI for all applicants whom are being considered for an international financial service license; and (4) changing the immediate right appeal for a denial of an issuance of a permit to 15 days to appeal the Board's decision.

Section 721 is amended in paragraph (1) by striking the $5,000 annual license fee and increasing the annual fee to $75,000 and providing for an initial fee of $75,000; and in paragraph (5) by taking the sole discretion away from the Board to establish the conditions to determine if the capital of the international financial entity has been subscribed to, issued and paid-in.

Section 726 is amended in paragraph (3) to include "factoring" and by adding a new paragraph (12) allowing international financial service entities to provide credit reporting services.

A section 730a is added that sets forth the bases upon which the Banking Board may deny issuing a license to operate in the Virgin Islands as an international financial services entity.

Section 735a is added and provides for the establishment of the International Financial Services Center Revolving Fund where monies will be deposited to be used to fund the salary of a person whose responsibility will be to ensure that financial services entities comply with the provisions of title 9 Virgin Islands Code, chapter 25.

Sections 736 through 749 are amended to make the language more precise by changing "chapter" to "subchapter" or by changing "title" to "subchapter" or by striking "corporation" and inserting "international financial services entity".

Section 750, subsections (a), (b), (c), (d) and (e) set forth activities that an international financial services entity may not engage in and the penalties for engaging in those activities. Subsections (f) set forth the penalties for violation specific sections of chapter 25 and subsection (g) provides that the Board may fine an international financial services entity not more than $5,000 for any violation of the chapter not specifically enumerated in section 750. Subsections (h), (i), (j) and (k) set forth the rights and powers of the Board within the framework of the imposition of the fines.

Sections 751, 752 and 754 are amended to make stylistic changes and section 753 is stricken.

A section 755 is added to provide that any international financial services entity licensed after the effective date of the section must seek tax benefits through the Virgin Islands Economic Development Commission.

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