**COMMITTEE ON FINANCE**

# BILL NO. 31-0442

## Thirty-first Legislature of the Virgin Islands

**September 8, 2016**

An Act amending the Virgin Islands Code title3, 9, and 22 to update the Insurance Laws of the Territory and to adopt the core standards and Model Laws and Regulations as established by the National Association of Insurance Commissioners ("NAIC") for purposes of obtaining accreditation with the NAIC, placing the Territory on par with other United States jurisdictions and attaining greater and more effective protection to the policyholders of the Territory

**PROPOSED BY:** Senator Neville James By Requests 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**WHEREAS**, the laws governing the insurance industry in the Territory are outdated as many of the laws were enacted in 1968 and have not been updated; and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 Division of Banking and Insurance ("Division") has been given additional legislative mandates over the years which have expanded immensely the Division's scope of responsibilities beyond primarily banking and insurance matters. The Division now regulates securities, debt management services, money transmitters, mortgage lenders and brokers and mortgage loan originators. Accordingly, Section 1 of this Act seeks to change the Division's name to "Division of Banking, Insurance and Financial Regulations" which is a true representation of the Division's legislative responsibilities; and

**WHEREAS**, while the Lieutenant Governor serves as "Commissioner of Insurance", title 22, Virgin Islands Code does not grant the Lieutenant Governor explicit authority to serve in this capacity. Therefore, the purpose of Section 3 of this Bill is to grant this authority; and

**WHEREAS**, the laws governing the insurance industry in the Territory do not grant to 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 NAIC 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 Rico 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; Now, Therefore,

***Be it enacted by the Legislature of the Virgin Islands:***

**SECTION 1**. Virgin Islands Code title 3 is amended in the following instance:

(1) Section 32 is added with the following language:

**"§32 Division of Banking, Insurance and Financial Regulation**

(a) As used in this section

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

(2) "Division" means the Division of Banking, Insurance and Financial Regulation.

(b) The Division of Banking, Insurance, and Financial Regulation is established in the Office of the Lieutenant Governor of the Virgin Islands

(c) The Division has general authority and jurisdiction to regulate and supervise banks, financial institutions, licensed lenders, mortgage lenders, mortgage brokers, insurance companies, insurance agents, insurance brokers, insurance adjusters, broker-dealers, agents, investment advisers, investment adviser representatives, federally covered investment advisers and other similar persons doing business in this Territory subject to the provisions of titles 9, 12A and 22 of the Virgin Islands Code.

(d) The Division is headed by a Director whose duties are prescribed by the Lieutenant Governor.

(e) In accordance with the general powers and duties conferred by section 53 of this title, the Lieutenant Governor, as Commissioner of Insurance, may employ and fix the compensation of personnel and incur expenses for the proper administration of the Division.

(f) The following entities, in addition to satisfying the requirements of the Division of Corporations and Trademarks under title 13 of the Virgin Islands Code, shall comply with the applicable licensure requirements set forth in titles 9, 22 and 12A of the Virgin Islands Code, and with any rules regulations promulgated by the Division:

(1) banks;

(2) financial institutions;

(3) licensed lenders;

(4) mortgage lenders;

(5) mortgage brokers;

(6) insurance companies;

(7) Insurance agents, brokers, adjusters;

(8) broker-dealers;

(9) agents;

(10) investment advisers;

(11) investment adviser representatives;

(12) federally covered investment advisers; and

(13) other similar persons doing business in this Territory.

(g) The Director shall keep on file for a reasonable period of time such instruments, papers and documents required by law to be filed with the Commissioner.

(h) Conflicts of Interest:

(1) It is unlawful during the term of office or while employed by the Division for the Commissioner, Director or any employee of the Division to be an officer, director, organizer, employee of or attorney for or otherwise be directly or indirectly interested in any institution subject to the supervision or regulation of the Division.

(2) It is unlawful for the Commissioner, Director and employees of the Division, during their terms of office to receive directly or indirectly any payment or gratuity from any institution subject to supervision or regulation by the Division or be in negotiation of loans for others with any such institution.

(3) It is unlawful for the Commissioner, Director and employees of the Division during their terms of office or employment to receive directly or indirectly any payment or gratuity from any institution subject to supervision or regulation by the Division or be engaged in the negotiation of loans for others with any such institution. The prohibitions contained in this paragraph may not be construed as prohibiting a person from being a depositor, equity interest owner, or member in any financial institution or an insurance policyholder or equity interest owner on the same terms as are available to the public generally.

(4) If the Commissioner, Director or any employee of the Division or the spouse of any of them or the son or daughter of any of them residing at their respective homes obtains a loan from or holds an equity interest in any financial institution subject to supervision or regulation by the Division, the fact of the loan or of the holding, together with the appropriate terms and conditions, must be disclosed immediately to the Commissioner in writing by the person obtaining the loan or holding.

(5) A record of the indebtedness or holding described in subdivision (4) of this must be kept on file in the Division and shall be open to inspection by the public.

(6) The Commissioner or the Director shall investigate any loan or equity interest of a Division employee to ensure that no preferential treatment was given to the Division employee in the process of granting the loan or issuing the interest and that the loan or interest will not compromise the employee's effectiveness in carrying out the employee's employment duties. If the loan has been obtained by, or if the interest is held by the Commissioner, the Office of the Inspector General shall conduct the investigation."

**SECTION 2**. Virgin Islands Code title 22, chapter 1 is amended at the beginning of section 7 by inserting "in addition to any other penalty provided in this title, striking "$10" and "$1000" and inserting "$500" and "$2,000" respectively, and by striking the language after "imprisonment".

**SECTION 3**. Chapter 3 of Title 22 of the Virgin Islands Code is amended in the following instance:

(a) Section 51 is amended by striking all of the language within the subsection and inserting new language that reads as follows:

"**Commissioner of Insurance.** The Division of Banking, Insurance and Financial Regulation (hereinafter "Division"), as established in Chapter 3, Section 32 of Title 3 of the Virgin Islands Code, is administered by the Lieutenant Governor of the Virgin Islands as the Commissioner of Insurance. As used throughout this title, "Commissioner" means the Lieutenant Governor as the Commissioner of Insurance."

(b) Section 53 is amended in the following instances:

(1) Subsection (c) is amended in paragraph (1) by striking all the language in the subsection and inserting new language that reads: "adopt rules and regulations and increase fees necessary to carry out the administration of this title."

(2) Paragraphs (5) and (6) are added and read as follows:

"(5) Issue subpoenas, examine persons, administer oaths and require production of papers and records; and

(6) Issue orders as authorized by or necessary to administer and carry out the purpose of this title."

(3) Subsection (d) of Section 53 is amended by striking all the language within the subsection and inserting new language: that reads as follows: "It is unlawful during the term in office or while employed with the Division for the Commissioner, Director or any employee of the Division to be an officer, director organizer, employee of or attorney for otherwise be directly or indirectly interested in any insurance company or insurance business in the Territory, except as a policyholder."

**SECTION 4.** Chapter 9 of Title 22 is amended in the following instances.

(1) Subsection 222 (a) is amended by adding the following sentence:

"All annual and quarterly statements filed pursuant to this section shall be prepared in accordance with the National Association of Insurance Commissioners' (hereinafter "NAIC") Annual Statement Instructions and follow those accounting procedures and practices that are prescribed in the NAIC's Accounting Practices and Procedures Manual and any subsequent revisions thereto that are adopted for use by the Commissioner by rule, administrative order or bulletin."

(2) Subsection 222 (b) is redesignated as subsection 222 (c).

(3) A new Subsection 222 (b) is added with the following language:

"(b) All authorized insurers reporting to the Commissioner in accordance with the requirements of section 222 shall file with the Division the appropriate NAIC Annual Statement Blank, which shall be prepared in accordance with the NAIC Annual Statement Instructions and follow those accounting procedures and practices prescribed by the NAIC Accounting Practices and Procedures Manual."

(4) Subsection 222(c) is re-designated as subsection 222 (d).

(5) Subsection 222 (d) is re-designated as subsection 222 (e).

(6) The language in Section 230(a) is replaced with the following:

"(a) Each domestic, foreign and alien insurer who is authorized to transact Insurance in the Territory shall annually on or before March 1st of each year, file with the NAIC, a copy of its annual statement convention blank, along with such additional filings (including any quarterly statement filings) as prescribed by the Commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the annual statement or quarterly statement filings subsequently filed with the Commissioner shall also be filed with the NAIC. Each Insurer shall concurrently provide the NAIC with a copy of the electronic filing containing its annual and quarterly statements."

**SECTION 5.** Virgin Islands Code title 22, chapter 19 is amended in the following instance:

(a) Section 451, subsection (c) is redesignated as Subsection (d) and a new subsection (c) is inserted and reads as follows: "(c) In accordance with chapter 20 of this title, the Commissioner may require additional capital and surplus above the minimum capital and surplus requirements set forth in this section, or any other section of this code based upon the type, volume and nature of the insurance business transacted."

(b) Section 464 (a) is amended by striking all the language after "No insurer" and inserting new language that reads as follows: ", other than a title insurer, may retain any risk on any one subject of insurance, regardless of where located or to be performed, in an amount exceeding ten percent of its surplus to policyholders.

(c) Subsection (e) is stricken.

**SECTION 6**. Virgin Islands Code title 22, chapter 21 is amended by adding sections 519, 520, and 521. To read as follows:

**"§519. Standards for Determining Whether Insurer is in Hazardous Financial Condition**

The Commissioner may consider the following standards, either singly or as a combination of two or more, to determine whether the continued operation of any insurer transacting an insurance business in this Territory may be considered to be hazardous to its policyholders, creditors or the general public:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;

(2) NAIC Insurance Regulatory Information System and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;

(4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-

admitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer’s remaining surplus as regards policyholders in excess of the minimum required;

(6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether a reinsurer, obligor or any entity within the insurer’s insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the Commissioner may affect the solvency of the insurer;

(8) Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount which in the opinion of the Commissioner may affect the solvency of the insurer;

(9) Whether any “controlling person” of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Commissioner;

(14) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(18) Whether management persistently engages in material under reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

**§520. Commissioner’s Additional Authority to Take Corrective Action**.

(a) For the purposes of making a determination of an insurer’s financial condition under section 519, the Commissioner may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Practices And Procedures Manual, and Virgin Islands law and regulations;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(b) If the Commissioner determines that the continued operation of the insurer licensed to transact business in this Territory may be hazardous to its policyholders, creditors or the general public, then the Commissioner may, upon a determination, issue an order requiring the insurer to:

(1) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) reduce, suspend or limit the volume of business being accepted or renewed;

(3) reduce general insurance and commission expenses by specified methods;

(4) increase the insurer's capital and surplus;

(5) suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) file reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;

(7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;

(8) document the adequacy of premium rates in relation to the risks insured;

(9) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Commissioner;

(10) correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the Commissioner;

(11) provide a business plan to the Commissioner in order to continue to transact business in the state; and

(12) notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Commissioner considers necessary to improve the financial condition of the insurer. If the insurer is a foreign insurer, the Commissioner's order may be limited to the extent provided by statute.

**§521 Review and Appeal of Commissioner's Order.** An insurer subject to an order issued under subsection 520(b) may request a hearing to review the order in accordance with the procedures set forth in chapter 7 of this title.

**SECTION 7.** Virgin Islands Code title 22, chapter 25, section 601 is amended by adding subsection 601(c) to read as follows:

"(c) The Commissioner may, from time to time, amend and establish any new or additional filing fees, initial and renewal application licensing fees, examination fees and all fees payable as they relate to the Commissioner's powers and duties under this title."

**SECTION 8.** The following sections of the Virgin Islands Code are amended by striking "Division of Banking and Insurance" and inserting "Division of Banking, Insurance and Financial Regulation":

(1) title 9, §1, §132(d), §262, §502 (7) and §716 (g);

(2) title 13, §853(a) (3);

(3) title 22, §102 (a) and (c), §787 (b), §1671 (a), §6654 (c), paragraphs (5) and (10), §6655 (h) and §6601 (a), paragraphs (10) and (23); and

(4) title 33, §3101 (b).

## BILL SUMMARY

Section 1 Proposes several general changes to the Virgin Islands Code to reflect the additional scope of responsibilities granted to the Division of Banking and Insurance ("Division") over the years, which thereby expanded the jurisdiction of the Division. A new Section 32 of Title 3 of the Virgin Islands Code is added to change the name of the Division from "Division of Banking and Insurance" to the Division of Banking, Insurance and Financial Regulation", a name that more accurately reflects and includes all of the Division's legislative mandates. The new Section 32 also establishes the Division within the Office of the Lieutenant Governor; expands the jurisdiction of the Division and creates a "Conflict of Interest" provision prohibiting certain actions by the Commissioner and the employees of the Division; and creates a provision for the retention of documents that are filed with the Division. Section 32 further formally creates the position of the "Director" of the Division, allows for the staffing of the Division, and includes a requirement that the applicable entities that fall within the jurisdiction of the Division must, in addition to complying with the requirements of the Division of Corporations and Trademarks, meet any other requirements of titles 9 (banking code), 22 (insurance code) and 12A (consumer code).

Section 2 of the bill amends Section 7 of Title 22 to increase the additional fine for violating Title 22 from $10 to $1,000 to a range of $500 to $2000.

Section 3 of the bill amends Sections 51 and 53 of Title 22. Specifically, Section 51 is amended to designate the Lieutenant Governor as the Commissioner of Insurance. Section 53 is amended to expand the authority of the Commissioner of Insurance and prohibits the Commissioner, director or any employee of the Division from being an officer or employee of an insurer licensed to do business in the territory.

Section 4 addresses the National Association of Insurance Commissioners "NAIC" accounting practices and procedures requirement by amending Chapter 9, Section 222 of Title 22 of the Virgin Islands Code to include language requiring that an insurance company apply the NAIC's Accounting Practices and Procedures when preparing and filing its annual and quarterly statements.

Section 4 of the bill also addresses the NAIC requirements for filing with the NAIC by amending Chapter 9, Section 230 of Title 22 of the Virgin Islands Code to include language requiring that all filings that are made with the Commissioner be also made with the NAIC in both electronic and paper format.

Section 5 of the bill addresses the NAIC capital and surplus requirement by amending Chapter 19, Section 451 of Title 22 of the Virgin Islands Code to include language authorizing the insurance commissioner to require additional capital and surplus based on the type, volume and nature of insurance business transacted by an insurance company.

Section 5 of the bill also addresses the NAIC risk limitation requirement by amending Chapter 19, Section 464 of Title 22 of the Virgin Islands Code to include language that insurers limit the risk on any one subject of insurance to an amount not to exceed 10% of its surplus to insurers regardless of where the subject of the insurance is located or to be performed.

Section 6 of the bill addresses the NAIC corrective action language requirement by amending Chapter 21, Sections 519, 520 and 521 to include the language contained in the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition-Model Regulation 385. Section 519 sets forth the standards for determining whether an insurer's continued operation of insurance business in the territory is deemed to be hazardous to the insurer's policyholders, creditors or the general public. Section 520 grants to the insurance commissioner additional authority to take corrective action depending on what financial condition the insurer is in. Section 521 provides for due process by allowing for the review and appeal by an insurer of the commissioner's proposed corrective action.

Section 7 Proposes to grant to the Lieutenant Governor, as the Commissioner of Insurance, the authority to amend the required fees for individuals and entities engaging in insurance business in the territory. Section 7 of the legislation amends Section 601 of Title 22 to grant to the Commissioner of Insurance, when necessary, the authority amend the fees listed in Section 601 and add additional fees.

Section 8 amends several sections of the Code which reference the Division of the Banking and Insurance to make them consistent with the Division's new name.

**REVIEWER'S NOTE**

**This Governor's Bill contains some redundancies and internal organization and arrangement problems with respect to the creation of the Division and the duties of the Commissioner of Insurance/Lieutenant Governor. Section 7, as drafted could be an impermissible delegation of the Legislatures authority to amend the fees the Legislature has established by enactment of law. It would also appear that some of the provisions of this proposed act would require transitional time and would therefore require a deferred effective date.**

**BR16-1419(G31-0031) Budget/June 27, 2016**