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BILL NO. 33-0015

Thirty-Third Legislature of the Virgin Islands

March 11, 2019

An Act amending section 105(f) of title 22 Virgin Islands Code to satisfy the accreditation standards established by the National Association of Insurance Commissioners in its model laws and update the insurance laws of the Virgin Islands of the United States placing them on par with other United States jurisdictions thereby affording greater and more effective protection to the policyholders in the Virgin Islands

PROPOSED BY: Senator Kenneth L. Gittens by request of the Governor

1 **WHEREAS**, the laws governing the insurance industry in the Virgin Islands of the United
2 States are outdated as many of the laws were enacted in 1968 and have not been updated;

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

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

8 **WHEREAS**, the National Association of Insurance Commissioners ("NAIC") has
9 established core accreditation standards and a comprehensive set of laws, known as the Model

1 Laws and Regulations, in order to assist United States jurisdictions in their regulation of the
2 solvency of their multi-state domestic insurance industry thereby affording greater protection to
3 the policyholders in the United States;

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

7 **WHEREAS**, the Virgin Islands has adopted and continues to adopt the NAIC Model Laws
8 and Regulations that are necessary to obtain substantial compliance with the NAIC accreditation
9 standards and is therefore not in compliance with the NAIC accreditation standards; and

10 **WHEREAS**, the adoption of the language authorizing the sharing of information regarding
11 insurance companies amongst U. S. insurance regulatory authorities will afford greater protection
12 to the policyholders in the Territory by enhancing solvency regulation of insurers, place the Virgin
13 Islands on par with other United States jurisdiction and will satisfy one of the NAIC requirements
14 for bringing the Virgin Islands into compliance with the NAIC accreditation standards; Now,
15 Therefore,

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

17 **SECTION 1.** Title 22 of the Virgin Islands Code is amended by striking the language in
18 section 105(f) and replacing it with the following language:

19 (f) Privilege for, and Confidentiality of Ancillary Information

20 (1) (A) Except as provided in Subsection (e) above and in this subsection, documents,
21 materials or other information, including, but not limited to, all working papers, and copies thereof,
22 created, produced or obtained by or disclosed to the Commissioner or any other person in the
23 course of an examination made under this Chapter, or in the course of analysis by the

1 Commissioner of the financial condition or market conduct of a company shall be confidential by
2 law and privileged, shall not be subject to inspection by the public, shall not be subject to subpoena,
3 and shall not be subject to discovery or admissible in evidence in any private civil action. The
4 Commissioner is authorized to use the documents, materials or other information in the furtherance
5 of any regulatory or legal action brought as part of the Commissioner's official duties.

6 (B) Documents, materials or other information, including, but not limited to, all
7 working papers, and copies thereof, in the possession or control of the National Association
8 of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law
9 and privileged, shall not be subject to subpoena, and shall not be subject to discovery or
10 admissible in evidence in any private civil action if they are:

11 (i) Created, produced or obtained by or disclosed to the National Association
12 of Insurance Commissioners and its affiliates and subsidiaries in the course of an
13 examination made under this Chapter, or assisting a commissioner in the analysis of
14 the financial condition or market conduct of a company; or

15 (ii) Disclosed to the National Association of Insurance Commissioners and
16 its affiliates and subsidiaries under Paragraph (3) of this subsection by a commissioner.

17 (C) For the purposes of Paragraph 1(B), "Chapter" includes the law of another
18 state or jurisdiction that is substantially similar to this Chapter.

19 (2) Neither the Commissioner nor any person who received the documents, materials
20 or other information while acting under the authority of the Commissioner, including the National
21 Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to
22 testify in any private civil action concerning any confidential documents, materials or information
23 subject to Paragraph (1).

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

3 (A) May share documents, materials or other information, including the
4 confidential and privileged documents, materials or information subject to Paragraph (1),
5 with other state, federal and international regulatory agencies, with the National Association
6 of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and
7 international law enforcement authorities, provided that the recipient agrees to maintain the
8 confidentiality and privileged status of the document, material, communication or other
9 information;

10 (B) May receive documents, materials, communications or information,
11 including otherwise confidential and privileged documents, materials or information, from
12 the National Association of Insurance Commissioners and its affiliates and subsidiaries, and
13 from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and
14 shall maintain as confidential or privileged any document, material or information received
15 with notice or the understanding that it is confidential or privileged under the laws of the
16 jurisdiction that is the source of the document, material or information; and

17 (C) May enter into agreements governing sharing and use of information
18 consistent with this subsection.

19 (4) No waiver of any applicable privilege or claim of confidentiality in the documents,
20 materials or information shall occur as a result of disclosure to the Commissioner under this section
21 or as a result of sharing as authorized in Paragraph (3).

1 (5) A privilege established under the law of any state or jurisdiction that is substantially
2 similar to the privilege established under this subsection shall be available and enforced in any
3 proceeding in, and in any court of, this Territory.

4 (6) In this subsection "department," "insurance department," "law enforcement
5 agency," "regulatory agency," and the "National Association of Insurance Commissioners"
6 include, but are not limited to, their employees, agents, consultants and contractors.

7 BR19-0293/G33-001/March 7, 2019/