

**FLOOR**

**BILL NO. 33-0016**

**Thirty-Third Legislature of the Virgin Islands**

**March 11, 2019**

An Act amending title 22 Virgin Islands Code, to add a new chapter 20a entitled "The Risk Management and Own Risk and Solvency Assessment Act" which meets the accreditation standards established by the National Association of Insurance Commissioners in its model laws and updates 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

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

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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2 States are outdated as many of the laws were enacted in 1968 and have not been updated;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



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;

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

**WHEREAS**, the Virgin Islands 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; and

**WHEREAS**, the enactment of the Risk Management and Own Risk and Solvency Assessment Act will afford greater protection to the policyholders in the Territory by enhancing solvency regulation of insurers, place the Virgin Islands on par with other United States jurisdiction and will satisfy one of the NAIC requirements for bringing the Virgin Islands 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 20a to read as follows:

**“Chapter 20a. Virgin Islands Risk Management and Own Risk and Solvency Assessment Act”**

**SECTION ANALYSIS**

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10 § 485. Purpose and Scope.

11 The Legislature of the Virgin Islands finds and declares that, in accordance with the goals  
12 and objectives of the National Association of Insurance Commissioners ("NAIC") for insurance  
13 companies to achieve greater financial solvency, there exists the need for insurance companies  
14 domiciled in the Territory to improve their capabilities to endure severe weather events such as  
15 Hurricanes Irma and Maria and any other unforeseen natural and manmade events. The purpose  
16 of this Act is to establish the requirement that insurance companies doing business in the Territory  
17 maintain a risk management framework and complete an Own Risk and Solvency Assessment  
18 ("ORSA"). This Act further provides guidance and instructions for companies when filing an  
19 ORSA Summary Report upon the request of the Commissioner of Insurance of this Territory.

20 The Legislature further finds and declares that the ORSA Summary Report will contain  
21 confidential and sensitive information related to an insurer or insurance group's identification of  
22 risks material and relevant to the insurer or insurance group filing the report. This information  
23 will include proprietary and trade secret information that has the potential for harm and competitive



1 disadvantage to the insurer or insurance group if the information is made public. It is the intent of  
2 this Legislature that the ORSA Summary Report shall be a confidential document filed with the  
3 Commissioner, that the ORSA Summary Report will be shared only as stated herein and for the  
4 sole purpose of assisting the Commissioner in the performance of his or her duties, and that in no  
5 event shall the ORSA Summary Report be subject to public disclosure.

6 **§486. Applicability**

7 This chapter shall apply to all insurers domiciled in this Territory unless exempt pursuant  
8 to Section 491.

9 **§487. Definitions.**

10 (a) "Commissioner" means the Commissioner of Insurance of the Virgin Islands.

11 (b) "Insurer" has the same meaning as set forth in Section 4 of this title, except that it  
12 shall not include agencies, authorities or instrumentalities of the United States, its possessions and  
13 territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political  
14 subdivision of a state.

15 (c) For the purpose of conducting an ORSA, the term "insurance group" shall mean those  
16 insurers and affiliates included within an insurance holding company system as defined in The  
17 Virgin Islands Insurance Holding Company System Regulatory Act encoded in Chapter 14 of this  
18 title.

19 (d) An "Own Risk and Solvency Assessment" or "ORSA" means a confidential internal  
20 assessment, appropriate to the nature, scale and complexity of an insurer or insurance group,  
21 conducted by that insurer or insurance group of the material and relevant risks associated with the  
22 insurer or insurance group's current business plan, and the sufficiency of capital resources to  
23 support those risks.



(e) "ORSA Guidance Manual" means the current version of the *Own Risk and Solvency Assessment Guidance Manual* developed and adopted by the National Association of Insurance Commissioners (NAIC) and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on January 1 following the calendar year in which the changes have been adopted by the NAIC.

(f) An "ORSA Summary Report" means a confidential high-level summary of an insurer or insurance group's ORSA.

**§488. Risk Management Framework.**

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

**§489. ORSA Requirement.**

Subject to the exemptions in Section 491, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

**§490. ORSA Summary Report.**

(a) Upon the Commissioner's request, and no more than once each year following the completion of its internal strategic planning process, an insurer shall submit to the Commissioner an ORSA Summary Report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer and/or the insurance group of



1 which it is a member. Notwithstanding any request from the Commissioner, if the insurer is a  
2 member of an insurance group, the insurer shall submit the report(s) required by this subsection if  
3 the Commissioner is the lead state commissioner of the insurance group as determined by the  
4 procedures within the Financial Analysis Handbook adopted by the National Association of  
5 Insurance Commissioners.

6 (b) The report(s) shall include a signature of the insurer or insurance group's chief risk  
7 officer or other executive having responsibility for the oversight of the insurer's enterprise risk  
8 management process attesting to the best of his/her belief and knowledge that the insurer applies  
9 the enterprise risk management process described in the ORSA Summary Report and that a copy  
10 of the report has been provided to the insurer's board of directors or the appropriate committee  
11 thereof.

12 (c) An insurer may comply with subsection (a) by providing the most recent and  
13 substantially similar report(s) provided by the insurer or another member of an insurance group of  
14 which the insurer is a member to the commissioner of another state or to a supervisor or regulator  
15 of a foreign jurisdiction, if that report provides information that is comparable to the information  
16 described in the ORSA Guidance Manual. Any such report in a language other than English must  
17 be accompanied by a translation of that report into the English language.

18 **§491. Exemption.**

19 (a) An insurer shall be exempt from the requirements of this Act, if:

20 (1) The insurer has annual direct written and unaffiliated assumed premium,  
21 including international direct and assumed premium but excluding premiums reinsured with  
22 the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000;  
23 and,



1           (2) The insurance group of which the insurer is a member has annual direct written  
2           and unaffiliated assumed premium including international direct and assumed premium, but  
3           excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal  
4           Flood Program, less than \$1,000,000,000.

5           (b) If an insurer qualifies for an exemption pursuant to paragraph (1) of subsection (a),  
6           but the insurance group of which the insurer is a member does not qualify for exemption pursuant  
7           to paragraph (2) of subsection (a), then the ORSA Summary Report that may be required pursuant  
8           to Section 490 shall include every insurer within the insurance group. This requirement may be  
9           satisfied by the submission of more than one ORSA Summary Report for any combination of  
10          insurers provided any combination of reports includes every insurer within the insurance group.

11          (c) If an insurer does not qualify for an exemption pursuant to paragraph (1) of  
12          subsection (a), but the insurance group of which it is a member qualifies for exemption pursuant  
13          to paragraph (2) of subsection (a), then the only ORSA Summary Report that may be required  
14          pursuant Section 490 shall be the report applicable to that insurer.

15          (d) An insurer that does not qualify for an exemption pursuant to subsection (a) may  
16          apply to the Commissioner for a waiver from the requirements of this Act based upon unique  
17          circumstances. In deciding whether to grant the insurer's request for waiver, the Commissioner  
18          may consider the type and volume of business written, ownership and organizational structure, and  
19          any other factor the Commissioner considers relevant to the insurer or insurance group of which  
20          the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in  
21          more than one state, the Commissioner shall coordinate with the lead state commissioner and with  
22          the other domiciliary commissioners in considering whether to grant the insurer's request for a  
23          waiver.



1 (e) Notwithstanding the exemptions stated in this Section,

2 (1) The Commissioner may require that an insurer maintain a risk management  
3 framework, conduct an ORSA and file an ORSA Summary Report based on unique  
4 circumstances including, but not limited to, the type and volume of business written,  
5 ownership and organizational structure, federal agency requests, and international supervisor  
6 requests.

7 (2) The Commissioner may require that an insurer maintain a risk Management  
8 framework, conduct an ORSA and file an ORSA Summary Report if the insurer has Risk-  
9 Based Capital for company action level event as set forth in Section 473 of the Virgin Islands  
10 Risk-Based Capital for Insurers Act, meets one or more of the standards of an insurer deemed  
11 to be in hazardous financial condition and the Commissioner's additional authority to take  
12 corrective action as set forth in Sections 519 and 520 of this title, or otherwise exhibits  
13 qualities of a troubled insurer as determined by the Commissioner.

14 (f) If an insurer that qualifies for an exemption pursuant to subsection (a) subsequently  
15 no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most  
16 recent annual statement or in the most recent annual statements of the insurers within the insurance  
17 group of which the insurer is a member, the insurer shall have one (1) year following the year the  
18 threshold is exceeded to comply with the requirements of this Act.

19 **§492. Contents of ORSA Summary Report.**

20 (a) The insurer shall prepare the ORSA Summary Report consistent with the ORSA  
21 Guidance Manual, subject to the requirements of subsection (b) of this Section. The insurer shall  
22 maintain documentation and supporting information and make them available upon examination  
23 or upon request of the Commissioner.



1       (b) The review of the ORSA Summary Report, and any additional requests for  
2 information, shall be made using similar procedures currently used in the analysis and examination  
3 of multi-state or global insurers and insurance groups.

4 **§493. Confidentiality.**

5       (a) Documents, materials or other information, including the ORSA Summary Report,  
6 in the possession of or control of the Division of Banking, Insurance and Financial Regulation that  
7 are obtained by, created by or disclosed to the Commissioner or any other person under this Act,  
8 is recognized by this Territory as being proprietary and to contain trade secrets. All such  
9 documents, materials or other information shall be confidential by law and privileged, shall not be  
10 subject to examination by the public, shall not be subject to subpoena, and shall not be subject to  
11 discovery or admissible in evidence in any private civil action. However, the Commissioner is  
12 authorized to use the documents, materials or other information in the furtherance of any regulatory  
13 or legal action brought as a part of the Commissioner's official duties. The Commissioner shall  
14 not otherwise make the documents, materials or other information public without the prior written  
15 consent of the insurer.

16       (b) Neither the Commissioner nor any person who received documents, materials or  
17 other ORSA-related information, through examination or otherwise, while acting under the  
18 authority of the Commissioner or with whom such documents, materials or other information are  
19 shared pursuant to this Act shall be permitted or required to testify in any private civil action  
20 concerning any confidential documents, materials, or information subject to subsection (a).

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



1           (1) May, upon request, share documents, materials or other ORSA-related  
2 information, including the confidential and privileged documents, materials or information  
3 subject to subsection (a), including proprietary and trade secret documents and materials  
4 with other territorial, state, federal and international financial regulatory agencies, including  
5 members of any supervisory college as defined in Section 328 of the Virgin Islands Insurance  
6 Holding System Regulatory Act, with the NAIC and with any third-party consultants  
7 designated by the Commissioner, provided that the recipient agrees in writing to maintain  
8 the confidentiality and privileged status of the ORSA-related documents, materials or other  
9 information and has verified in writing the legal authority to maintain confidentiality; and

10           (2) May receive documents, materials or other ORSA-related information,  
11 including otherwise confidential and privileged documents, materials or information,  
12 including proprietary and trade-secret information or documents, from regulatory officials  
13 of other foreign or domestic jurisdictions, including members of any supervisory college as  
14 defined in the Virgin Islands Insurance Holding Company System Regulatory Act, and from  
15 the NAIC, and shall maintain as confidential or privileged any documents, materials or  
16 information received with notice or the understanding that it is confidential or privileged  
17 under the laws of the jurisdiction that is the source of the document, material or information.

18           (3) Shall enter into a written agreement with the NAIC or a third-party consultant  
19 governing sharing and use of information provided pursuant to this Act, consistent with this  
20 subsection that shall:

21           (A) Specify procedures and protocols regarding the confidentiality and  
22 security of information shared with the NAIC or a third-party consultant pursuant to  
23 this Act, including procedures and protocols for sharing by the NAIC with other state



1 and territorial regulators from states and territories in which the insurance group has  
2 domiciled insurers. The agreement shall provide that the recipient agrees in writing to  
3 maintain the confidentiality and privileged status of the ORSA-related documents,  
4 materials or other information and has verified in writing the legal authority to  
5 maintain confidentiality;

6 (B) Specify that ownership of information shared with the NAIC or a third-  
7 party consultant pursuant to this Act remains with the Commissioner and the NAIC's  
8 or a third-party consultant's use of the information is subject to the direction of the  
9 Commissioner;

10 (C) Prohibit the NAIC or third-party consultant from storing the information  
11 shared pursuant to this Act in a permanent database after the underlying analysis is  
12 completed;

13 (D) Require prompt notice to be given to an insurer whose confidential  
14 information in the possession of the NAIC or a third-party consultant pursuant to this  
15 Act is subject to a request or subpoena to the NAIC or a third-party consultant for  
16 disclosure or production;

17 (E) Require the NAIC or a third-party consultant to consent to intervention by  
18 an insurer in any judicial or administrative action in which the NAIC or a third-party  
19 consultant may be required to disclose confidential information about the insurer  
20 shared with the NAIC or a third-party consultant pursuant to this Act; and

21 (F) In the case of an agreement involving a third-party consultant, provide for  
22 the insurer's written consent.



1 (d) The sharing of information and documents by the Commissioner pursuant to this Act  
2 shall not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is  
3 solely responsible for the administration, execution and enforcement of the provisions of this Act.

4 (e) No waiver of any applicable privilege or claim of confidentiality in the documents,  
5 proprietary and trade-secret materials or other ORSA-related information shall occur as a result of  
6 disclosure of such ORSA-related information or documents to the Commissioner under this  
7 Section or as a result of sharing as authorized in this Act.

8 (f) Documents, materials or other information in the possession or control of the NAIC  
9 or a third-party consultants pursuant to this Act shall be confidential by law and privileged, shall  
10 not be subject to examination by the public, shall not be subject to subpoena, and shall not be  
11 subject to discovery or admissible in evidence in any private civil action.

12 **§494. Sanctions.**

13 Any insurer failing, without just cause, to timely file the ORSA Summary Report as  
14 required in this Act shall be required, after notice and a hearing, to pay a penalty of \$500.00 for  
15 each day's delay, to be recovered by the Commissioner and the penalty so recovered shall be paid  
16 into the General Revenue Fund of this Territory. The maximum penalty under this Section is  
17 \$5,000. The Commissioner may reduce the penalty if the insurer demonstrates to the  
18 Commissioner that the imposition of the penalty would constitute a financial hardship to the  
19 insurer.

20 **§495. Severability Clause.**

21 If any provision of this Act, or the application thereof to any person or circumstance, is  
22 held invalid, such determination shall not affect the provisions or applications of this Act which



1 can be given effect without the invalid provision or application, and to that end the provisions of  
2 this Act are severable.

3 **§496. Effective Date.**

4 The requirements of this Act shall become effective when this Act becomes law. The first  
5 filing of the ORSA Summary Report shall be in the year in which this Act becomes law and in  
6 accordance with Section 490 of this Act.

7 **BR19-0294 (G33-002)/March 7, 2019/**