

ACT NO 8076

BILL NO. 32-0234

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending chapter 43 of title 22 of the Virgin Islands Code adding a subchapter II enacting the Property and Casualty Actuarial Opinion Act to meet the accreditation standards established by the National Association of Insurance Commissioners in its model laws to update the insurance laws of the Territory

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WHEREAS, the laws governing the insurance industry in the Virgin Islands are outdated, as many of the laws were enacted in 1968 and have not been updated; and

WHEREAS, the laws governing the insurance in the Territory do not grant to the Commissioner of Insurance of the Virgin Islands all the necessary authority to effectively regulate the solvency of the multi-state domestic 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 to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry, thereby issuing greater protection to the policyholders in the United States; and

WHEREAS, all 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

WHEREAS, the enactment of the Property and Casualty Actuarial Opinion Act will place the Territory on par with other United States jurisdiction and will satisfy one of the NAIC requirements for making the Territory eligible for NAIC accreditation; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. This act may be cited as the Virgin Islands Property and Casualty Actuarial Opinion Act.

SECTION 2. Title 22 Virgin Islands Code, chapter 43 is amended by designating the existing provisions as subchapter I and by adding a subchapter II that reads as follows:

“Subchapter II. Property and Casualty Actuarial Opinion Statement

§1054. Statement of Actuarial Opinion

Every property and casualty insurance company doing business in the Virgin Islands, unless otherwise exempted by the domiciliary Commissioner of Insurance, shall annually submit the opinion of an Appointed Actuary entitled “Statement of Actuarial Opinion.” This opinion must be filed in accordance with the appropriate National Association of Insurance Commissioners (“NAIC”) Property and Casualty Annual Statement Instructions.

§1055. Actuarial Opinion Summary

(a) Every property and casualty insurance company domiciled in the Virgin Islands that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary written by the company’s appointed actuary, as a document supporting the Actuarial Statement of Actuarial Opinion required by section 1054. The Actuarial Opinion Summary must be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

(b) A company licensed but not domiciled in the Virgin Islands shall provide the Actuarial Opinion Summary upon the Commissioner’s request.

§1056. Actuarial Report and Work papers

(a) An Actuarial Report and underlying work papers, as required by the appropriate NAIC Property and Casualty Annual Statement Instructions, must be prepared to support each Actuarial Opinion.

(b) If the insurance company fails to provide a supporting Actuarial Report or work papers at the request of the Commissioner, or the Commissioner determines that the supporting Actuarial Report or work papers provided by the insurance company are otherwise unacceptable, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or work papers.

§1057. The appointed actuary is not liable for damages to any person, other than the insurance company and the Commissioner, for any act, error, omission, decision or conduct with respect to the actuary’s opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

§1058. Confidentiality

(a) The Statement of Actuarial Opinion must be provided with the Annual Statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and must be treated as a public document.

(b) (1) Documents, materials or other information in the possession or control of the Division of Banking, Insurance and Financial Regulation that are considered an Actuarial Report, work papers, or Actuarial Opinion Summary provided in support of the opinion, and any other material provided by the company to the Commissioner in connection with the Actuarial Report, work papers or Actuarial Opinion Summary, are confidential and privileged, are not subject to examination by the public, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(2) Paragraph (1) of this subsection may not be construed to limit the Commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline, so long as the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents, nor may this subsection be construed to limit the Commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(c) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner may be permitted or compelled to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (b) of this section.

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

(1) share documents, materials or other information, including the confidential and privileged documents, materials, or other information subject to section 1058 (b) with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with territorial, state, federal and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

(2) 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) enter into agreements governing sharing and use of information consistent with this section.

(e) No applicable privilege or claim of confidentiality in the documents, materials or information is waived because of disclosure to the Commissioner under this section or as a result of sharing as authorized in (d) of this section.”

SECTION 3. (a) Title 22 Virgin Islands Code, sections 1054, 1055 and 1056 as enacted by section 2 of this act take effect December 31 of the first full calendar year following the enactment of this act; and

(b) Title 22 Virgin Islands Code, sections 1057 and 1058 take effect 60 days after the enactment of this act.

Thus passed by the Legislature of the Virgin Islands on August 31, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 13th Day of September, A.D., 2018.



Myron D. Jackson
President

Jean A. Forde
Legislative Secretary

Bill No. 32-0234 hereby approved.

Witness my hand and the Seal of the
Government of the United States
Virgin Islands at Charlotte Amalie,

St. Thomas, this 25th day of September, 2018 A.D.

Kenneth E. Mapp
Governor

