

ACT NO. 8182

BILL NO. 33-0016

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

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WHEREAS, the laws governing the insurance industry in the Virgin Islands of the United States are outdated as many of the laws were enacted in 1968 and have not been updated;

WHEREAS, the laws governing the insurance industry in the Virgin Islands 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 Virgin Islands;

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

WHEREAS, the National Association of Insurance Commissioners ("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;

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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§ 485. Purpose and Scope

The Legislature of the Virgin Islands finds and declares that, in accordance with the goals and objectives of the National Association of Insurance Commissioners (“NAIC”) for insurance companies to achieve greater financial solvency, there exists the need for insurance companies domiciled in the Territory to improve their capabilities to endure severe weather events such as Hurricanes Irma and Maria and any other unforeseen natural and manmade events. The purpose of the Virgin Islands Risk Management and Own Risk and Solvency Assessment Act is to establish the requirement that insurance companies doing business in the Territory maintain a risk management framework and complete an Own Risk and Solvency Assessment (“ORSA”). The

Virgin Islands Risk Management and Own Risk and Solvency Assessment Act further provides guidance and instructions for companies when filing an ORSA Summary Report upon the request of the Commissioner of Insurance of this Territory.

The Legislature further finds and declares that the ORSA Summary Report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of this Legislature that the ORSA Summary Report shall be a confidential document filed with the Commissioner, that the ORSA Summary Report will be shared only as stated herein and for the sole purpose of assisting the Commissioner in the performance of his duties, and that in no event shall the ORSA Summary Report be subject to public disclosure.

§486. Applicability

(a) This chapter shall apply to:

(1) All insurers domiciled in the Territory, unless exempted pursuant to section 491;

(2) All foreign insurers as defined in section 201(2) of this title that are not subject to the requirements and standards as adopted by statute in their jurisdiction of domicile which are substantially similar to those contained in this chapter; and

(3) All licensed alien insurers as defined in section 201(3) of this title that are not entered through and licensed to transact insurance in at least one other U.S. jurisdiction that has adopted, by statute, requirements and standards which are substantially similar to those contained in this chapter.

(b) The exemptions contained in section 491 do not apply to paragraph (3) of subsection (a) of this section.

§487. Definitions

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

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

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

(d) An “Own Risk and Solvency Assessment” or “ORSA” means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group’s current business plan, and the sufficiency of capital resources to 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 which it is a member. Notwithstanding any request from the Commissioner, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subsection if the Commissioner is the lead state commissioner of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) The reports shall include a signature of the insurer or insurance group’s chief risk officer or other executive having responsibility for the oversight of the insurer’s enterprise risk management process attesting to the best of his belief and knowledge that the insurer applies the

enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee thereof.

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

§491. Exemption

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

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

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

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

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

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

(e) Notwithstanding the exemptions stated in this section:

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

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

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

§492. Contents of ORSA Summary Report

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

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

§493. Confidentiality

(a) Documents, materials or other information, including the ORSA Summary Report, in the possession of, or control of, the Division of Banking, Insurance and Financial Regulation that are obtained by, created by, or disclosed to the Commissioner or any other person under this chapter, is recognized by this Territory as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to examination by the public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall

not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

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

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

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

(2) May receive documents, materials or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in the Virgin Islands Insurance Holding Company System Regulatory Act, and from the NAIC, and shall maintain as confidential or privileged any documents, materials 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.

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

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this chapter, including procedures and protocols for sharing by the NAIC with other state and territorial regulators from states and territories in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(B) Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this chapter remains with the Commissioner and the

NAIC's or a third-party consultant's use of the information is subject to the direction of the Commissioner;

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

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

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

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

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

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

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

§494. Sanctions

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

§495. Severability Clause

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

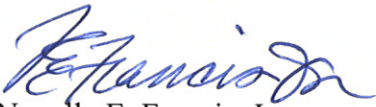
§496. Effective Date


The first filing of the ORSA Summary Report shall be in the year in which this chapter becomes law and in accordance with section 490 of this chapter.

Thus passed by the Legislature of the Virgin Islands on June 25, 2019.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 5th day of July, A.D., 2019.





Novelle E. Francis, Jr.
President


Alicia V. Barnes
Legislative Secretary



Bill No. 33-0016 is hereby approved.

**Witness my hand and the seal of the
Government of the United States
Virgin Islands at Charlotte Amalie,
St. Thomas, this 20th day of July, 2019 A.D.**


Albert Bryan, Jr.
Governor