

ACT NO. 8594

BILL NO. 34-0255

THIRTY-FOURTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2022

An Act repealing and re-enacting title 22 Virgin Islands Code sections 1443 and 1446 to implement revisions that were made to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law

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WHEREAS, it is imperative that all United States jurisdictions, including the Virgin Islands, periodically update their insurance laws commensurate with the ever-evolving insurance industry to strengthen the solvency regulation of insurance companies doing business in the United States;

WHEREAS, the National Association of Insurance Commissioners (NAIC), a non-profit organization composed of all insurance regulators in the United States, has established and continues to establish core accreditation standards and a comprehensive set of laws, known as Model Laws and Regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry;

WHEREAS, jurisdictions in the United States that have been accredited by the NAIC have adopted and continue to adopt NAIC Model Laws and Regulations, thereby achieving and maintaining accreditation status with the NAIC;

WHEREAS, the Virgin Islands, through the Office of the Lieutenant Governor, Division of Banking, Insurance and Financial Regulation, was accredited by the NAIC on December 6, 2019, an achievement of immeasurable significance, which primarily requires the Territory's enactment of certain NAIC Model Laws and the promulgation of related NAIC rules and regulations to maintain its accreditation status;

WHEREAS, on September 25, 2018, Act No. 8074, also known as "The Virgin Islands Credit for Reinsurance Act", which is an NAIC Model Law, was signed into law and was later codified as title 22 Virgin Islands Code, chapter 55A;

WHEREAS, in 2019, the NAIC made certain revisions to two provisions of its Credit for Reinsurance Model Law, which now have been adopted as amendments to the law in 46 United States jurisdictions and are currently under consideration in another three United States jurisdictions;

WHEREAS, the adoption of the 2019 amendments is an NAIC accreditation requirement and as such, the Virgin Islands, as an NAIC accredited jurisdiction, must adopt the amendments to the Credit for Reinsurance Model Law for the Territory to maintain NAIC accreditation; and

WHEREAS, the amendments to the Credit for Reinsurance Model Law will:

(1) strengthen state regulation, prevent regulatory arbitrage, protect United States policyholders, and reduce the uncertainty faced by insurers when planning for collateral liability;

(2) implement the reinsurance collateral provisions of the Covered Agreements that were entered into between the United States and the European Union and the United Kingdom, which require states to eliminate collateral requirements entirely within five years or be subject to federal pre-emption; and

(3) the Covered Agreements, as the United States entered into, eliminates the requirement that non-United States reinsurers retain collateral in the United States when these non-United States reinsurers are financially strong and are domiciled and licensed in well-regulated jurisdictions. Now, therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code, chapter 55A sections 1443 and 1446 are repealed and reenacted with amendments to read as follows:

“§ 1443. Credit Allowed a Domestic Ceding Insurer

(a) Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsections (c), (d), (e), (f), (g), (h) or (i); but the Commissioner may adopt regulations pursuant to section 1446(b) which provide specific additional requirements relating to or setting forth:

(1) the valuation of assets or reserve credits;

(2) the amount and forms of security supporting reinsurance arrangements described in section 1446(b); or

(3) the circumstances pursuant to which credit will be reduced or eliminated.

(b) Credit is allowed under subsections (c), (d) or (e) only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit is allowed under subsections (e) or (f) only if the applicable requirements of subsection (j) have been satisfied.

(c) Credit is allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in the Virgin Islands.

(d) Credit is allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Commissioner as a reinsurer in the Virgin Islands.

To be eligible for accreditation, a reinsurer must:

(A) file with the Commissioner evidence of its submission to the jurisdiction of the Territory;

(B) submit to the Commissioner's authority to examine its books and records;

(C) be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(D) file annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(E) demonstrate to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000, and its accreditation has not been denied by the Commissioner within 90 days after submission of its application.

(e)(1) Credit is allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this chapter and the assuming insurer or United States branch of an alien assuming insurer:

(A) maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(B) submits to the authority of this Territory to examine its books and records.

(2) The requirement of paragraph (1)(A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(f)(1) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in section 1445, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.

(2)(A) Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(i) The commissioner of the state where the trust is domiciled; or

(ii) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(B) The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the Commissioner.

(C) The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee shall report to the Commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(3) The following requirements apply to the following categories of assuming insurer:

(A) The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as provided in paragraph 3(B) of this subsection.

(B) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(C) (i) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust must consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, the trust must consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which \$100,000,000 must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account; and

(ii) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) Not later than 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(D) In the case of a group of incorporated underwriters under common administration, the group shall:

(i) Have continuously transacted an insurance business outside the United States for not less than three years immediately prior to making application for accreditation;

(ii) Maintain aggregate policyholders' surplus of at least \$10,000,000,000;

(iii) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(iv) In addition, maintain a joint trusteed surplus of which \$100,000,000 must be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(v) Not later than 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary

regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(g) Credit must be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in the Virgin Islands and secures its obligations in accordance with the requirements of this subsection.

(1) To be eligible for certification, the assuming insurer must:

(A) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to paragraph (3) of this subsection;

(B) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commissioner pursuant to regulation;

(C) maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner pursuant to regulation;

(D) agree to submit to the jurisdiction of this Territory, appoint the Commissioner as its agent for service of process in this Territory, and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(E) agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(F) must satisfy any other requirements for certification deemed relevant by the Commissioner.

(2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. To be eligible for certification, in addition to satisfying requirements of paragraph (1):

(A) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which must include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection;

(B) The incorporated members of the association must not be engaged in any business other than underwriting as a member of the association and are subjected to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(C) Not later than 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each

underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The Commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commissioner as a certified reinsurer.

(A) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the Commissioner.

(B) A list of qualified jurisdictions must be published through the NAIC Committee Process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

(C) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

(D) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(4) The Commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commissioner pursuant to regulation. The Commissioner shall publish a list of all certified reinsurers and their ratings.

(5) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the Commissioner.

(A) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with the provisions of section 1444 or in a multi-beneficiary trust in accordance with subsection (f), except as otherwise provided in this subsection.

(B) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (f), and chooses to secure its obligations incurred as a certified reinsurer in the form of a multi-beneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other United States jurisdictions and for its obligations subject to subsection (f). It is a condition to the grant of certification under subsection (g) that the certified reinsurer must have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of the trust any deficiency of any other such trust account.

(C) The minimum trustee surplus requirements provided in subsection (f) are not applicable with respect to a multi-beneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that the trust must maintain a minimum trustee surplus of \$10,000,000.

(D) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(E) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations.

(i) If the Commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner may defer to that jurisdiction's certification and may defer to the rating assigned by that jurisdiction, and the assuming insurer is considered a certified reinsurer in the Virgin Islands.

(7) A certified reinsurer that ceases to assume new business in the Virgin Islands may request inactive status to maintain its certification to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(8) For purposes of this subsection:

(A)(i) "jurisdiction" means places other than the United States and any state, district or territory of the United States; and

(ii) "terminated" means revocation, suspension, voluntary surrender, or inactive status.

(h) (1) Credit is allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth in this subsection.

(A) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a Reciprocal Jurisdiction. A "Reciprocal Jurisdiction" is a jurisdiction that meets one of the following:

(i) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this Territory or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(iii) A qualified jurisdiction, as determined by the Commissioner pursuant to subsection (g)(3), which is not otherwise described in subparagraph (A)(i) or (A)(ii) above and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the Commissioner in regulation.

(B) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in regulation.

(C) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set forth in regulations. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the Reciprocal Jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(D) The assuming insurer must agree and provide adequate assurance to the Commissioner, in a form specified by the Commissioner pursuant to regulations, as follows:

(i) The assuming insurer must provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set

forth in subparagraph (B) or (C), or if any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this Territory and to the appointment of the Commissioner as agent for service of process. The Commissioner may require that consent for service of process be provided to the Commissioner and included in each reinsurance agreement. Nothing in this provision limits, or in any way alters, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement that involves this Territory's ceding insurers and agree to notify the ceding insurer and the Commissioner and to provide security in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security must be in a form consistent with subsection (g) and section 1444, as specified by the Commissioner in regulation.

(E) The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, certain documentation to the Commissioner, as specified by the Commissioner in regulation.

(F) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.

(G) The assuming insurer's supervisory authority must confirm to the Commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, that the assuming insurer complies with the requirements set forth in subparagraphs (B) and (C).

(H) Nothing in this subsection precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

(2) The Commissioner shall create and publish a list of Reciprocal Jurisdictions timely.

(A) The Commissioner's list must include any Reciprocal Jurisdiction as defined under paragraph (1)(A)(i) and (ii) of this subsection and must consider any other Reciprocal Jurisdiction included on the NAIC list of Reciprocal Jurisdictions published through the NAIC Committee Process. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued by the Commissioner.

(B) The Commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a Reciprocal Jurisdiction, in accordance with a process set forth in regulations issued by the Commissioner, except that the Commissioner may not remove from the list a Reciprocal Jurisdiction as defined under paragraph (1)(A)(i) and (ii) of this subsection. Upon removal of a Reciprocal Jurisdiction from this list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction must be allowed, if otherwise allowed pursuant to the Virgin Islands Credit Reinsurance Act.

(3) The Commissioner shall create and publish timely a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The Commissioner may add an assuming insurer to the list if an NAIC accredited jurisdiction has added the assuming insurer to a list of the assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the Commissioner as required under paragraph (1)(D) of this subsection and complies with any additional requirements that the Commissioner may impose by regulation, except to the extent that they conflict with an applicable covered agreement.

(4) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation.

(A) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section 1444.

(B) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of section 1444.

(5) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(6) Nothing in this subsection limits in any way or alters the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance

agreement, except as expressly prohibited by the Virgin Islands Credit Reinsurance Act or other applicable law or regulation.

(7) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute adding this subsection, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to paragraph (1), and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

(A) This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of the Virgin Islands Credit Reinsurance Act.

(B) Nothing in this subsection authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(C) Nothing in this subsection limits, or in any way alters, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(i) Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsections (c), (d), (e), (f), (g) or (h), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(j) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in the Virgin Islands, the credit permitted by subsections (e) and (f) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1)(A) If the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and

(B) designate the Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.

(2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if this obligation is created in the agreement.

(k) If the assuming insurer does not meet the requirements of subsections (c), (d), (e) or (h), the credit permitted by subsection (f) or (g) must not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (f)(3), or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(2) The assets must be distributed by, and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(d)(1) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification. The Commissioner shall give the reinsurer notice and an opportunity for a hearing. The suspension or revocation may not take effect until after the Commissioner's order on the hearing, unless:

(A) the reinsurer waives its right to a hearing;

(B) the Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection (g)(6); or

(C) the Commissioner finds that an emergency requires immediate action, and a court of competent jurisdiction has not stayed the Commissioner's action.

(2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 1444. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (g)(5) or section 1444.

(m)(1) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner, not later than 30 days after reinsurance recoverables from any single assuming

insurer, or group of affiliated assuming insurers, exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner not later than 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

§ 1446. Regulations

(a) The Commissioner may adopt regulations implementing the provisions of this chapter, including regulations applicable to reinsurance arrangements described in subsection (b).

(b) A regulation adopted pursuant to this subsection may apply only to reinsurance relating to:

(1) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(2) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(3) Variable annuities with guaranteed death or living benefits;

(4) Long-term care insurance policies; or

(5) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

(c) A regulation adopted pursuant paragraph (1) or (2) of subsection (b), may apply to any treaty containing (i) policies issued on or after January 1, 2015, or (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015, or both.

(d) A regulation adopted pursuant to subsection (b) may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable;

(e) A regulation adopted pursuant to subsection (b) does not apply to cessions to an assuming insurer that:

(1) meets the conditions set forth in section 1443(h) or if this Territory has not adopted provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law in a minimum of five other states; or

(2) is certified in this Territory or, if this Territory has not adopted provisions substantially equivalent to section 2E of the NAIC's Credit for Reinsurance Model Law, certified in a minimum of five other states; or

(3) maintains at least \$250,000,000 in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

(A) licensed in at least 26 states; or

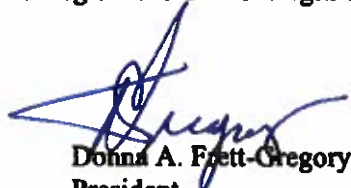
(B) licensed in at least 10 states and licensed or accredited in a total of at least 35 states.


(f) The authority to adopt regulations pursuant to subsection (b) does not limit the Commissioner's general authority to adopt regulations pursuant to subsection (a).

Thus passed by the Legislature of the Virgin Islands on July 20, 2022.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 21st Day of July, A.D., 2022.




Donna A. Frett-Gregory
President


Genevieve R. Whitaker
Secretary



Bill No. 34-0255 is hereby approved.

**Witness my hand and the Seal of the Government of
the United States Virgin Islands at Charlotte Amalie,
St. Thomas, This 5th day of August, 2022 A.D.**


**Albert Bryan Jr.
Governor**