

# ACT NO. 8558

BILL NO. 34-0166

## THIRTY-FOURTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2022

An Act amending title 22 Virgin Islands Code, chapter 27 by changing the name of the chapter to "The Virgin Islands Unauthorized and Surplus Lines Insurer Act" and by establishing the diligent search requirements that an authorized surplus lines broker must fulfill before placing coverage for certain lines of insurance with a surplus lines insurer in the Territory; and for other purposes

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**WHEREAS**, the Virgin Islands insurance industry is very competitive, in view of the fact that it is comprised of not only an admitted market of licensed insurers, but also a surplus lines market of registered insurers to provide insurance coverage for numerous risks;

**WHEREAS**, the surplus lines market, inclusive of United States and non-United States domiciled insurers, is a distinct segment of the Territory's insurance industry, consisting of non-admitted specialized insurers covering risks offered through surplus lines brokers not generally available within the admitted market;

**WHEREAS**, of great significance in the Territory, at present, surplus lines insurers cannot write insurance coverage that is available from admitted insurers and may only write coverage declined by a majority of admitted insurers;

**WHEREAS**, there is an increase in the number of eligible surplus lines insurers in the Territory, and equally, there was, in 2020, the onset of a transition from admitted insurer status to surplus lines insurer status by the Territory's leading property and casualty insurer;

**WHEREAS**, title 22 of the Virgin Islands Code, chapter 27, entitled "Unauthorized Insurers Law," codifies the Virgin Islands surplus lines insurance laws and mandates the responsibilities of a surplus lines insurer, also referred to as an "unauthorized insurer", and surplus lines broker as well as the requirements each must satisfy in order to be deemed eligible and authorized by the Commissioner of Insurance to conduct surplus lines business in the Territory;

**WHEREAS**, notably, chapter 27 consisting currently of sections 651 through 667 was enacted in 1968 and has not been amended substantially since then;

**WHEREAS**, it is necessary that chapter 27 be updated to clarify its purpose, which will be accomplished, in large part, by changing the title of the chapter from "The Unauthorized Insurers Law" to "The Virgin Islands Unauthorized and Surplus Lines Insurer Act";

**WHEREAS**, standards need to be established statutorily for the placement of surplus lines coverage in the Territory;

**WHEREAS**, section 653(a)(2), which at present, reads: "the insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this territory...", is a provision in the Territory's surplus lines law that must be amended because it places an unreasonable burden on a surplus lines broker by requiring the surplus lines broker to first search for the requested coverage from a majority of admitted insurers, when there are hundreds of admitted insurers in the Territory;

**WHEREAS**, accordingly, the amendment to section 653(a)(2) will require that a diligent search for homeowner's insurance and other types of personal lines insurance products which are permissible to export to the surplus lines market be made with only two authorized admitted insurers before placing the coverage with an eligible surplus lines insurer;

**WHEREAS**, pursuant to title 20 Virgin Islands Code, section 707, compulsory automobile liability insurance must be provided by an admitted insurer and may not be exported to the surplus lines market;

**WHEREAS**, the amendment to 22 V.I.C. § 653(a)(2) would also require that there be one diligent search requirement before a request for small commercial property and casualty insurance coverage is placed with an eligible surplus lines insurer in the Territory when the annual premium is less than \$35,000.000 and there shall be no diligent search requirement with an admitted insurer prior to placement of a request for large commercial property and casualty insurance coverage with an eligible surplus lines insurer when the annual premium is in excess of \$35,000.00;

**WHEREAS**, section 654 mandates that there be an endorsement of a surplus lines contract to include the name of the surplus lines broker and stamped wording to read: "This contract is registered and delivered as a surplus lines coverage under the Insurance Code of the Virgin Islands";

**WHEREAS**, after the proposed amendment, the endorsement will also include the language that gives written notice to consumers who purchase coverage in the Territory's surplus lines market, that such coverage, in the event of an insolvency, is not protected by the Virgin Islands Guaranty Fund;

**WHEREAS**, section 662 requires a surplus lines broker to remit to the Division of Banking, Insurance and Financial Regulation on or before the first day of February, May, August and November of each year, five percent premium taxes on the quarterly premiums of surplus lines insurance transacted on risks located in the Territory; and

**WHEREAS**, all premium taxes collected under section 662 must be deposited into the Guaranty Fund, notwithstanding the fact that in accordance section 652(a)(2) provides that losses will not be paid from the Virgin Islands Guaranty Fund even if the unauthorized insurer is insolvent; Now, Therefore,

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

**SECTION 1.** Title 22 Virgin Islands Code, chapter 27 is amended as follows:

(a) By striking the chapter title and inserting a new chapter title that reads as follows:  
“The Virgin Islands Unauthorized and Surplus Lines Insurer Act.”

(b) Section 563 subsection (a) is amended:

(1) By striking paragraph (2) in its entirety and inserting a new paragraph (2) to read:

“(2) a diligent search for homeowner’s insurance and other types of personal lines insurance products that are permissible to export to the surplus lines market must be made by a licensed surplus lines broker with only two authorized admitted insurers before placing the coverage with an eligible surplus lines insurer. Pursuant to 20 V.I.C. § 707, compulsory automobile liability insurance must be provided by an admitted insurer and therefore may not be exported to the surplus lines market.

(A) There shall be only one diligent search requirement before a request for small commercial property and casualty insurance coverage can be placed with an eligible surplus lines insurer in the Territory.

(B) There shall be no diligent search requirement with an admitted insurer prior to placement of a request for large commercial property and casualty insurance coverage with an eligible surplus lines insurer.

(C) As used in this paragraph, large commercial property and casualty insurance means coverage with an annual premium in excess of \$35,000.00 while small commercial property and casualty insurance is defined as coverage with an annual premium less than \$35,000.00”

(2) A subsection (c) is added to read as follows:

“(c) Every surplus lines insurer shall submit to the Division for reconciliation purposes and as a part of the renewal review of surplus lines activity conducted in the Territory, an Annual Premiums Written Report segregated by the activity of each of its licensed surplus lines brokers. The Annual Premiums Written Report must include: the insured’s name; the policy number; the effective date of and the expiration date of the policy; the type of risk; the location of risk or the address of the risk; the premium amount, and the coverage amount or the exposure.”

(c) Section 654 is amended as follows:

(1) by striking “have stamped upon it”;

(2) by inserting “and shall have” after “procured it”;

(3) by inserting “language stamped upon it” after “the following”;

(4) by inserting “Virgin Islands” before “Guaranty”; and

(5) by striking all the language after “Fund” and inserting “as codified in 33 V.I.C. § 3061, which only protects an insured if an admitted insurer becomes insolvent.”

(d) Section 668 is added and reads as follows:

**“§ 668. Definitions**

As used in this chapter:

(a) “Eligible Surplus Lines Insurer” means an unauthorized insurer which in accordance with section 659 has been deemed eligible by the Commissioner of Insurance through the Division of Banking, Insurance and Financial Regulation to develop new coverages and to structure policies and premiums appropriate for risks. Surplus lines insurers are subject to the regulatory and solvency requirements of their domiciliary state or country.

(b) “Home State” means, in accordance with Nonadmitted and Reinsurance Reform Act, (1) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or (2) if 100% of the insured risk is located out of the state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated. If more than one insured from an affiliated group is a named insured on a single non-admitted insurance contract, the term "home state" means the home state, as determined pursuant to the foregoing, of the member of the affiliated group that has the largest percentage of premium attributable to it under the insurance contract.

(c) “Surplus Lines Broker” means an individual licensed in accordance with the procedures set forth in section 656 to sell, solicit or negotiate insurance on properties, risks, or exposures located in the Territory with an unauthorized and surplus lines insurer, the insurance coverage of which cannot be procured from insurers admitted and licensed to do business in the Territory and who must comply with this chapter's licensing, reporting and compliance requirements.


(d) “Unauthorized and Surplus Lines Insurance” means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a non-admitted insurer eligible to accept such insurance.”

Thus passed by the Legislature of the Virgin Islands on March 24, 2022.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 30<sup>th</sup> Day of March, A.D., 2022.



  
Donna A. Frett-Gregory  
President

  
Genevieve R. Whitaker  
Secretary

**Bill No. 34-0166 is hereby approved.**

**Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, This 11<sup>th</sup> day of April, 2022 A.D.**



  
Albert Bryan Jr.  
Governor